

MONTANA LEGISLATIVE HISTORY

Chapter 438 1997

Bill H 49 S _____ Original bill & history ☒ C

H. Committee on Education & Cultural Resources S. Committee on Education & Cultural Resources

Hearing Date(s) Jan 22 ☒ C

Hearing Date(s) Mar 19 ☒ C

Feb 14 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out _____ ☐ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

1/13	FISCAL NOTE RECEIVED		
1/16	FISCAL NOTE PRINTED		
2/07	HEARING		
3/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/20	2ND READING PASSED AS AMENDED	92	8
3/22	3RD READING PASSED	91	8
	TRANSMITTED TO SENATE		
3/24	FIRST READING		
3/24	REFERRED TO FINANCE & CLAIMS		
4/02	HEARING		
4/09	COMMITTEE REPORT—BILL CONCURRED		
4/10	2ND READING CONCURRED	49	1
4/11	3RD READING CONCURRED	48	2
	RETURNED TO HOUSE		
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 437		
	EFFECTIVE DATE: 07/01/97—SECTIONS 1 & 3-6		
	EFFECTIVE DATE: 07/01/98—SECTION 2		

HB 48 INTRODUCED BY QUILICI, ET AL. *LC0427 DRAFTER: NISS*

CONFORM REQUIREMENTS FOR RETIREMENT OF MONTANA NATIONAL
GUARD MEMBERS BECAUSE OF AGE TO REQUIREMENTS FOR
RETIREMENT OF MEMBERS OF THE NATIONAL GUARD OF THE UNITED
STATES

BY REQUEST OF DEPARTMENT OF MILITARY AFFAIRS

12/16	INTRODUCED		
12/20	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO STATE ADMINISTRATION		
1/07	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE PRINTED		
1/09	HEARING		
1/10	COMMITTEE REPORT—BILL PASSED		
1/11	2ND READING PASSED	99	1
1/13	3RD READING PASSED	98	2
	TRANSMITTED TO SENATE		
1/14	FIRST READING		
1/14	REFERRED TO STATE ADMINISTRATION		
1/23	HEARING		
1/24	COMMITTEE REPORT—BILL CONCURRED		
1/28	2ND READING CONCURRED	49	0
1/29	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
2/01	SIGNED BY SPEAKER		
2/03	SIGNED BY PRESIDENT		
2/03	TRANSMITTED TO GOVERNOR		
2/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 9		
	EFFECTIVE DATE: 02/07/97		

HB 49 INTRODUCED BY ELLIS, ET AL. *LC0438 DRAFTER: MCCLURE*

REVISE MONTANA TEACHER TENURE LAWS AND CONTESTED CASE
PROCEDURES

12/16 INTRODUCED

1/06	FIRST READING		
1/06	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/27	HEARING		
2/07	FISCAL NOTE REQUESTED		
2/14	FISCAL NOTE RECEIVED		
2/14	FISCAL NOTE PRINTED		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	77	19
2/26	3RD READING PASSED	79	20
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/19	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/22	2ND READING CONCURRED	44	5
3/24	3RD READING CONCURRED	47	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/15	2ND READING AMENDMENTS CONCURRED	91	8
4/16	3RD READING CONCURRED AS AMENDED	87	13
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 438		
	EFFECTIVE DATE: 07/01/97		

HB 50 INTRODUCED BY COBB *LC0463 DRAFTER: KURTZ*

PROVIDE FOR REGULATION OF NATURAL GAS TRANSPORTERS AS
COMMON CARRIERS

12/16	INTRODUCED
12/20	FISCAL NOTE REQUESTED
1/06	FIRST READING
1/07	FISCAL NOTE RECEIVED
1/09	FISCAL NOTE PRINTED
1/11	REFERRED TO NATURAL RESOURCES
1/31	HEARING
2/19	TABLED IN COMMITTEE
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL DIED IN COMMITTEE

HB 51 INTRODUCED BY TREXLER *LC0360 DRAFTER: KURTZ*

REQUIRE HIGHWAY PATROL OFFICERS, CITIZEN INSPECTORS, AND
OTHER AUTHORIZED EMPLOYEES OF THE DEPARTMENTS OF
TRANSPORTATION AND JUSTICE AND THE PUBLIC SERVICE
COMMISSION TO ASSIST COMMERCIAL MOTOR VEHICLE OPERATORS
IN MOVING VEHICLES TO SAFE LOCATIONS AND OBTAINING REPAIRS
BEFORE CONDUCTING INSPECTIONS, ISSUING CITATIONS, OR
DETAINING OPERATORS FOR VIOLATIONS OF SAFETY STANDARDS

12/17	INTRODUCED
1/06	FIRST READING
1/06	REFERRED TO TRANSPORTATION
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL DIED IN COMMITTEE

HB 52 INTRODUCED BY KITZENBERG *LC0254 DRAFTER: ERICKSON*

ALLOW THE BOARD OF PUBLIC EDUCATION TO PERMIT A SCHOOL
DISTRICT TO CONDUCT LESS THAN 180 DAYS OF PUPIL INSTRUCTION

HOUSE BILL NO. 49
INTRODUCED BY COBB

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS AND CONTESTED CASE PROCEDURES; PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO COMPLETES A 180-WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180-WORKING DAY PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180-WORKING DAY PROBATIONARY PERIOD; CLARIFYING THAT A DISTRICT MAY TERMINATE EMPLOYMENT FOR GOOD CAUSE; DEFINING "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY MAY BE WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF A TEACHER OR SPECIALIST; LIMITING APPEAL OF EMPLOYMENT TERMINATION TO FINAL AND BINDING ARBITRATION; ESTABLISHING A PROCEDURE FOR ARBITRATION NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR; REMOVING JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A COLLECTIVE BARGAINING AGREEMENT; AMENDING SECTIONS 20-3-210, 20-4-203, 20-4-204, 20-4-205, 20-4-208, AND 20-7-456, MCA; REPEALING SECTIONS 20-4-206 AND 20-4-207, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-4-203, MCA, is amended to read:

"20-4-203. Teacher and specialist tenure -- definitions -- waiver. (1) (a) Except as provided in 20-4-208 and subsection (1)(b) of this section, ~~whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be or~~ specialist working in a position requiring teacher or specialist certification, except as a district

CORRECTED INTRODUCED BILL

HB 49

1 superintendent, is considered to be tenured upon satisfactorily completing a 180-working day probationary
2 period and upon the earlier of:

3 (i) the date of the offer and acceptance of a contract for the second consecutive year; or

4 (ii) employment on June 30 of the year following the initial date of hire.

5 (b) If the teacher or specialist has not satisfactorily completed a 180-working day probationary
6 period before the end of the initial employment contract, the teacher or specialist is considered to be
7 tenured upon the satisfactory completion of the probationary period.

8 (2) Employment for less than 30-consecutive working days may not be counted as part of the
9 minimum 180-day requirement.

10 (3) Prior to receiving tenure, the employment relationship between a board of trustees and a
11 teacher or specialist may be terminated at any time by either party with or without good cause. A teacher
12 or specialist terminated during the probationary period may not pursue an action against the school district
13 under the provisions of Title 39, chapter 2, part 9. A school district may not be compelled to arbitrate a
14 grievance under 27-5-115 over a teacher or specialist termination during the probationary period.

15 (4) Upon receiving tenure, a teacher or specialist is considered to be reelected from year to year
16 thereafter as a tenure teacher or specialist at the same salary and in the same or a comparable position of
17 employment as that provided by the ~~last-executed~~ last-executed contract with the teacher or specialist
18 unless the trustees resolve by majority vote of their membership to terminate the services of the teacher
19 or specialist in accordance with the provisions of 20-4-204.

20 ~~(2)~~(5) The tenure of a teacher or specialist with a district may not be impaired upon termination
21 of services of the teacher or specialist if the following conditions exist:

22 (a) the tenure teacher or specialist is terminated because the financial condition of the district
23 requires a reduction in the number of teachers or specialists employed; and

24 (b) continued employment rights are provided for in a collectively bargained contract of the district.

25 (6) Upon receiving tenure, the employment of a teacher or specialist may be terminated for good
26 cause.

27 (7) The right to the same salary may be waived by mutual agreement between the district and the
28 teacher or specialist or, if the teacher or specialist is a member of a bargaining unit, by the teacher's or
29 specialist's exclusive representative.

30 (8) As used in this section, the following definitions apply:

(a) "Good cause" means reasonable, job-related grounds for dismissal that are based on failure to satisfactorily perform job duties, disruption of a school district's operation, or any other legitimate business reason.

(b) "Same salary" means the salary paid to a teacher or specialist for services provided during the previous school year, excluding fringe benefits, extra duty, or an extended-year contract."

Section 2. Section 20-4-204, MCA, is amended to read:

"20-4-204. Termination of tenure teacher or specialist services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher or specialist:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, ~~before May 1 of the current school fiscal year,~~ notify the teacher or specialist of the recommendation for termination and of the teacher's or specialist's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's or specialist information.

(3) The teacher or specialist may, in writing, waive the right to a hearing. Unless the teacher or specialist waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher or specialist, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or specialist or to reject the recommendation for termination.

(5) The tenure teacher or specialist may appeal a decision to terminate an employment contract to the county superintendent who may appoint a qualified attorney at law as legal advisor who shall assist the superintendent in preparing findings of fact and conclusions of law an arbitrator agreed upon by the district and the teacher or specialist or, if the teacher or specialist is represented by a labor organization, by the teacher's or specialist's exclusive representative. If a teacher or specialist is not a member of a bargaining unit or if the exclusive representative has declined to represent the teacher or specialist, the teacher or specialist or the district may request that the board of personnel appeals provide a list of arbitrators from which the teacher or specialist and the district shall, after the toss of a coin to determine the order of striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

~~(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.~~

(6) A request for arbitration must be made within 20 days from the date of termination unless an alternative time period is provided by the terms of a collective bargaining agreement.

(7) The decision of the arbitrator is final and binding. Each party shall pay one-half of an arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

(8) An arbitrator may order a school district to reinstate a teacher or specialist who has been terminated without good cause and to provide compensation, with interest, to a teacher or specialist for lost wages and fringe benefits from the date of termination to the date that the teacher or specialist is offered reinstatement to the same or a comparable position. Interim earnings, including the amount that the teacher or specialist could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent by a teacher or specialist in searching for, obtaining, or relocating to new employment must be deducted from interim earnings.

(9) Except as provided in this section, an arbitrator may not order a school district to provide compensation for punitive damages, pain and suffering, emotional distress, compensatory damages, attorney fees, or any other form of damages.

(10) Upon submission of the termination decision to an arbitrator, the teacher or specialist or the teacher's or specialist's exclusive representative may not file an action against the district for reinstatement or compensation of lost wages and fringe benefits.

(11) As used in this section, the following definitions apply:

(a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

(b) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

Section 3. Section 20-4-205, MCA, is amended to read:

"20-4-205. Notification of tenure teacher or specialist reelection -- acceptance. (1) The trustees shall provide written notice by ~~May 1~~ June 1 to all ~~tenure teachers or specialists~~ who have been reelected. Any ~~tenure teacher or specialist~~ who does not receive notice of reelection or termination ~~shall be~~ is automatically reelected for the ensuing school fiscal year.

(2) Any ~~tenure teacher or specialist~~ who receives notification of ~~his~~ reelection for the ensuing school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of ~~such~~ the reelection within 20 days after the receipt of the notice of reelection, and failure to ~~so~~ notify the trustees within 20 days ~~shall constitute~~ constitutes conclusive evidence of ~~his~~ the teacher's or specialist's nonacceptance of the tendered position."

Section 4. Section 20-4-208, MCA, is amended to read:

"20-4-208. Transfer from administrative position. (1) A tenure teacher or specialist serving in an administrative position may be assigned to a teaching or specialist position with a reduction in salary when the ~~economic conditions of the district require a reduction~~ reduces the size of its administrative staff. The salary for the new position must be the same as the salary that the teacher or specialist would have received if the teacher or specialist had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers or specialists, a district that assigns a tenure teacher or specialist serving in an administrative position to a teaching or specialist position shall recognize for ~~teacher~~ seniority purposes the tenure teacher's or

1 specialist's time of service in the administrative position.

2 (3) As used in this section, the term:

3 (a) "administrative position" means a position that the trustees of a district designate as
4 administrative or supervisory in nature, not including the position of district superintendent; and

5 ~~(b) "reduction of administrative staff" is limited to reductions necessary because of declining~~
6 ~~enrollment or financial exigency.~~

7 ~~(4) When a tenure teacher serving in an administrative position is to be transferred under this~~
8 ~~section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which~~
9 ~~a signed receipt must be obtained. The notification must include:~~

10 ~~(a) a statement of the reason or reasons for the reduction of administrative staff; and~~

11 ~~(b) a printed copy of this section for the teacher's information.~~

12 ~~(5) A tenure teacher who receives notice under subsection (4) may request in writing, within 10~~
13 ~~days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not~~
14 ~~less than 10 days or more than 20 days from receipt of the request unless both parties agree to an~~
15 ~~extension. If a hearing is requested, the trustees shall:~~

16 ~~(a) conduct the hearing to determine whether the reason or reasons for the transfer were in~~
17 ~~compliance with the provisions of subsection (1); and~~

18 ~~(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the~~
19 ~~teacher to the administrative position.~~

20 ~~(6) A tenure teacher may appeal a decision under this section to the county superintendent as~~
21 ~~provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason~~
22 ~~or reasons for the transfer were in compliance with the provisions of subsection (1).~~

23 ~~(7) The teacher or the trustees may appeal the determination of the county superintendent to the~~
24 ~~superintendent of public instruction as provided in 20-3-107.~~

25 ~~(8)(4) A tenure teacher who is transferred to a teaching position under this section must be offered~~
26 ~~the next comparable administrative position for which he is endorsed that becomes available in the district~~
27 ~~or specialist may appeal a decision pursuant to the arbitration procedure established in 20-4-204."~~

28
29 **Section 5.** Section 20-3-210, MCA, is amended to read:

30 **"20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of

1 a collective bargaining agreement or as provided under 20-3-211, 20-4-204, or 20-4-208, the county
2 superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions
3 of the trustees of a district in the county. Except as provided in subsection (2), exhaustion of administrative
4 remedies under this chapter is required prior to filing an action in district court concerning a decision of the
5 trustees. ~~When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher~~
6 ~~or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may~~
7 ~~appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing~~
8 ~~findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the~~
9 ~~superintendent of public instruction under the provisions for appeal of controversies in this title.~~ The county
10 superintendent shall hear and decide all controversies arising under:

11 (a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or

12 ~~(b) 20-4-206(4); or~~

13 ~~(c)(b)~~ any other provision of this title for which a procedure for resolving controversies is not
14 expressly prescribed.

15 (2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court
16 concerning a decision of the trustees of a district in the following instances:

17 (a) a state agency has been granted primary jurisdiction over the matter;

18 (b) the matter is governed by a specific statute; or

19 (c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

20 (3) The county superintendent shall hear the appeal and take testimony in order to determine the
21 facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The
22 county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the
23 matter of controversy that is made by the county superintendent must be based upon the facts established
24 at the hearing.

25 (4) The decision of the county superintendent may be appealed to the superintendent of public
26 instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any
27 other documents entered as testimony at the hearing to the superintendent of public instruction.

28 (5) Cost incurred by the office of the county superintendent must be paid from the general fund
29 budget of the county in which the controversy is initiated."
30

Section 6. Section 20-7-456, MCA, is amended to read:

"20-7-456. Tenure of teachers or specialists employed by cooperatives. (1) Teachers or specialists who have tenure rights with a district and who are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers or specialists employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 ~~through 20-4-207~~ and 20-4-205 are applicable to teachers or specialists employed by a cooperative.

(3) Tenure for a teacher or specialist employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher or specialist employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's or specialist's progress toward tenure status."

NEW SECTION. Section 7. Repealer. Sections 20-4-206 and 20-4-207, MCA, are repealed.

NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 9. Effective date -- applicability. [This act] is effective July 1, 1997, and applies retroactively, within the meaning of 1-2-109, to contracts offered for the 1997-98 school year.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0049, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising Montana teacher tenure laws and contested case procedures; providing tenure to a teacher or specialist who completes a 180-working day probationary period on the earlier of either the date of the offer and acceptance of a contract for the second consecutive year or employment on June 30 of the year following the initial date of hire; providing that if the teacher or specialist has not satisfactorily completed a 180-working day probationary period before the end of the initial employment contract, tenure is provided upon the satisfactory completion of the 180-working day probationary period; clarifying that a district may terminate employment for good cause; defining "good cause" and "same salary"; providing that the right to the same salary may be waived by mutual agreement; extending the deadline for notification of reelection of a teacher or specialist; limiting appeal of employment termination to final and binding arbitration; establishing a procedure for arbitration not covered by a collective bargaining agreement; limiting the remedies that may be imposed by an arbitrator; removing jurisdiction of a county superintendent to decide disputes arising from a collective bargaining agreement."

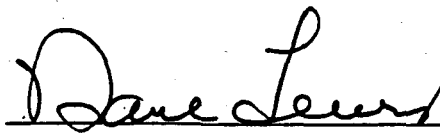
ASSUMPTIONS:

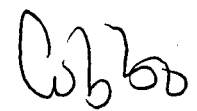
1. The cost of any arbitration will be paid by the district and the teacher or specialist.

FISCAL IMPACT: None

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The provision for termination disputes to go to binding arbitration may result in some increase in costs to school districts for arbitration. It is estimated that approximately 10 cases per year may require arbitration at a average cost of \$2000

 2-14-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOHN COBB, PRIMARY SPONSOR DATE

Fiscal Note for HB0049, as introduced

HB49

COMMITTEE--HOUSE EDUCATION

CHAIRMAN--ALVIN ELLIS

SECRETARY--ALBERTA STRACHAN/312-1A

NORMAL SCHEDULE => SITE: ROOM 312-1

DAYS: M,W,F

TIME: 3:00 P.M.

BILL NO--	REFERRED	HEARING	OTHER CONSIDERATION	DATES	EXECUTIVE ACTION/DATE/VOTE	-----	REREFERRED	----	DATE READ
HB0025	EWER, DAVID				AUTHORIZE CAPITALIZATION OF SCHOOL BUILDING RESERVE FOR UP TO 5 YEARS				
	1/06	1/13			DO PASS	01/15	VOTE: 17-0		1/16
HB0028	ROSE, JOHN				REQUIRE OPI & SCHOOL DISTRICT TRUSTEES TO DISCLOSE STUDENT ASSESSMENT DATA				
	1/06	1/10			PASS AS AMENDED	01/15	VOTE: 17-0		1/16
HB0049	ELLIS, ALVIN				REVISE TEACHER TENURE LAWS				
	1/06	1/27			PASS AS AMENDED	02/14	VOTE: 11-7		2/18
HB0052	KITZENBERG, SAM				ALLOWING SCHOOL DISTRICTS TO CONDUCT LESS THAN 180 DAYS OF PUPIL INSTRUCTION				
	1/06	1/10	01/15		PASS AS AMENDED	01/17	VOTE: 18-0		1/20
HB0077	SIMPKINS, DICK				REQUIRE PLEDGE OF ALLEGIANCE WITH RIGHT OF REFUSAL FOR TEACHER OR STUDENT				
	1/06	1/13			PASS AS AMENDED	01/15	VOTE: 16-1		1/16
HB0079	SIMPKINS, DICK				PROHIBIT BOARD OF PUBLIC EDUCATION TO IMPLEMENT RULES WITHOUT FUNDING SOURCE				
	1/06	1/15	01/29		PASS AS AMENDED	02/05	VOTE: 11-7		2/07
HB0104	HAGENER, TONI				EDUCATION COSTS PAID BY AGENCY RESPONSIBLE FOR OUT-OF-STATE PLACEMENT				
	1/06	1/13			PASS AS AMENDED	01/15	VOTE: 17-0		1/16
HB0183	MASOLO, GAY ANN				CHANGING SCHOOL FIRE DRILLS TO SCHOOL DISASTER DRILLS				
	1/08	1/20			DO PASS	01/24	VOTE: 18-0		1/27
HB0192	HANSON, SONNY				REQUIRE BIENNIAL REPORT ON STATE EDUCATIONAL SYSTEMS BY BOARD OF EDUCATION				
	1/09	1/15			DO PASS	01/17	VOTE: 18-0		1/20
HB0198	ELLIS, ALVIN				REVISING NONTENURE TEACHER LAWS				
	1/09	1/27			TABLED ON	02/14	VOTE: 17-1		
HB0206	MCCANN, MATT				AUTHORIZE DISSOLUTION OF K-12 DISTRICT IF LOSS OF FEDERAL FUNDING RESULTS				
	1/09	1/17			PASS AS AMENDED	01/24	VOTE: 15-3		1/27

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION

Call to Order: By **VICE-CHAIRMAN PEGGY ARNOTT**, on January 27, 1997, at 3:00 P.M., in Room 312-1.

ROLL CALL

Members Present:

Rep. Alvin A. Ellis, Jr., Chairman (R)
Rep. Peggy Arnott, Vice Chairman (Majority) (R)
Rep. Dan W. Harrington, Vice Chairman (Minority) (D)
Rep. Paul Bankhead (R)
Rep. Matt Denny (R)
Rep. Kim Gillan (D)
Rep. Antoinette R. Hagener (D)
Rep. George Heavy Runner (D)
Rep. Sam Kitzenberg (R)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Linda McCulloch (D)
Rep. Norm Mills (R)
Rep. William Rehbein, Jr. (R)
Rep. John "Sam" Rose (R)
Rep. Richard D. Simpkins (R)
Rep. Joe Tropila (D)
Rep. Allan Walters (R)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Services Division
Alberta Strachan, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJR 8 (1/23/97); HB 198
(1/13/97); HB 49 (1/8/97)
Executive Action: None.

HEARING ON HJR 8

Opening Statement by Sponsor: REP. MATT BRAINARD, H.D. 62
introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: .2.}

Closing by Sponsor: REP. ELLIS closed on the bill.
{Tape: 1; Side: 2; Approx. Time Count: 32.0.}

HEARING ON HB 49

Opening Statement by Sponsor: REP. JOHN COBB, H.D. 50 introduced the bill. EXHIBIT 6,7,8.
{Tape: 2; Side: 1; Approx. Time Count: .5.}

Proponents' Testimony:

Michael Dahlem, Attorney at Law, Helena. EXHIBIT 9A through 9B.
{Tape: 2; Side: 1; Approx. Time Count: 16.5.}

Robert Smith, Hays/Lodge Pole School District. EXHIBIT 10.
{Tape: 2; Side: 1; Approx. Time Count: 33.4. Comments: Mr. Smith also provided testimony from Bertha Other Bull, Lame Deer Public School}

Ray Phipps, Lame Deer School District.
{Tape: 2; Side: 1; Approx. Time Count: 35.5.}

Robert Fox, Hays/Lodge Pole School District. EXHIBIT 11.
{Tape: 2; Side: 1; Approx. Time Count: 38.4.}

Erik Feaver, Montana Education Association. EXHIBIT 12, 13.
{Tape: 2; Side: 1; Approx. Time Count: 39.1, Comments: Mr. Feaver also provided testimony from Terry Quintus.}

Terry Minow, Montana Federation of Teachers.
{Tape: 2; Side: 2; Approx. Time Count: 5.4.}

Opponents' Testimony:

Don Waldron, Montana Rural Education Association.
{Tape: 2; Side: 2; Approx. Time Count: 8.3.}

Cathy Swift, Montana Rural Education Association.
{Tape: 2; Side: 2; Approx. Time Count: 8.4.}

Lance Melton, Montana School Board Association. EXHIBIT 14.
{Tape: 2; Side: 2; Approx. Time Count: 22.4.}

Loren Frazier, Montana School Administrators Association.
{Tape: 2; Side: 2; Approx. Time Count: 26.5.}

Phil Reinemer, Circle resident.
{Tape: 2; Side: 2; Approx. Time Count: 31.0.}

Informational Testimony: None.
{Tape: 2; Side: 2; Approx. Time Count: 34.4.}

Questions From Committee Members and Responses:

{Tape: 2; Side: 2; Approx. Time Count: 34.5.}

Closing by Sponsor: REP. COBB closed on the bill.

{Tape: 3; Side: 1; Approx. Time Count: 12.0.}

1. clarify the meaning of same salary to exclude compensation received for any fringe benefits, extra duty or extended year contract
20-4-203 section 1
page 3, lines 4-5

2. permit voluntary waiver of the entitlement to same salary protection
20-4-203 section 1
page 2
lines 27-29

3. good cause discharge
20-4-203 section 1
page 2 lines 25-26

4. permit school districts to reduce the salary of an administrator who is returned to the classroom when the district reduces the number of administrators
20-4-208 section 4
page 5
lines 22-24

5. remove collective bargaining grievances from the jurisdiction of county superintendents
20-3-210 section 5
page 6
line 29-30
to page 7
line 1

6. extend the May 1 deadline for notice of reelection or termination
20-4-205 section 3
page 5
line 12

OPTION

change the notification deadline for reelection from June 1 to May 1 unless the district and teacher or union agree to extend the deadline.

7. specialists are included in bill and can be tenured
throughout bill

OPTION

remove specialist tenure from the bill

8. define good cause 20-4-208 section 1
page 3
lines 1-3

delete this section of the bill

9. grant tenure to teachers 20-4-203 section 1
and specialists after 180 days page 2
successful completion lines 1-9

10. permit school Districts	deletes 20-4-207	page 8
to dismiss nontenure teachers		lines 13
and specialists at any time	deletes 20-4-206	section 1
with or without cause.		page 2
		lines 10-14

"eliminate 'at Will' status during term of contract"

11. make binding arbitration 20-4-204 section 2
the exclusive procedure for page 4
appealing tenured teachers line 3 to
and specialists termination page 5 line 3.
decisions.

limit binding arbitration only to those teachers and specialists represented by labor organizations.

2

EXHIBIT 7
DATE 1-27-97
#B 49

Exhibit # 7 - 23 page
Teacher Tenure Contract
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT. 59602-1201
Phone: (406) 444-4775

ighthouse

TEACHER/TENURE/CONTINUING CONTRACT

Division of the States
Suite 2700, Denver, Colorado 80202-3427

303-299-3600
FAX 303-296-8332

PART I: TEACHER TENURE/CONTINUING CONTRACT PROVISIONS

Many states have addressed the issue of teacher dismissal in various ways. Some have eliminated tenure/continuing contracts (i.e., CO,NM,SD,FL); some have streamlined the due process timelines (i.e., MA,OK); others have retained tenure provisions but streamlined the due process provisions (i.e., MI,CT).

About 75 years ago in New Jersey. At that time job protection was seen as necessary because of prevalent nepotism, political favoritism and the tenure act is to assure continued employment to teachers who have been employed in a school district for a probationary period of time and have teachers must generally complete a specified period of probationary employment (usually three years). The tenured teacher is assured notice, a hearing, and a hearing before the school board, arbitrator, or specified person/group. The teacher can usually appeal the decision of the board or through a state statute or earned through a period of continuous employment:

Some states may create a contractual relationship that cannot be altered without violating constitutional guarantees. The Federal Constitution, Article 1, guarantees that the creation of a contract cannot be impaired. The United States Supreme Court found such a contractual relationship in the 1927 *Indiana Teacher Tenure Act*, which prohibited the legislature from subsequently depriving teachers of rights conveyed under the Act. However, a statutory relationship that does not have the elements required at the legislature's discretion. (McCarthy, 1992) — thus the continuing contract reference.

Deciding whether to grant tenure, as long as decisions are not discriminatory. Tenure decisions also must not be based on teachers' exercise of free speech. Some tenure statutes do not address performance evaluation at all, and others mandate evaluation criteria in substantial detail and make evaluation an integral part of the tenure system. Performance evaluation is not incompatible with the tenure system, although tenure laws have been weak in this respect and there is a widespread perception that tenured teachers are not subject to sufficiently critical evaluation. When a teacher's performance is judged unsatisfactory, the teacher is given an opportunity to demonstrate improvement. Since tenure is a product of legislation, there is no legal obstacle preventing states from strengthening the evaluation component of tenure. Tenure does not require continuing the employment of an incompetent teacher; all tenure laws provide for dismissal of incompetent teachers.

State	Req'd. for Non-Probationary Status	Descriptors (terms used or code citations)	Hearing	Appeal Forum	Other	Last Known Revision
AL	3 + R*	Tenure 16-24-1+	Board of Ed. at teacher's request Commission	State Tenure Commission (only further action is through the courts)		1989

Sources: Education Commission of the States, Information Clearinghouse, (Kathy Christie 303-299-3675) April 1995
and the Connecticut Education Association (John Board) 1995

* (R = Must return to begin the next school year.)

MONTANA ARBITRATORS ASSOCIATION

October 25, 1996

EXHIBIT 8

DATE 1-27-97

H B 49

Rep. John Cobb
P.O. Box 388
Augusta, MT 59410

Dear Representative Cobb:

I'm writing you regarding the proposed legislation to revise the Montana teacher tenure laws. This letter is not to support or oppose the legislation, but to specifically address the process of arbitration in dispute resolution.

There seems to be some misinformation about the use of arbitration in the public sector and the standards used in arbitration, especially concerning discipline and discharge.

According to statistics provided by the Federal Mediation and Conciliation Service (FMCS), in 1995 they provided arbitration panels for approximately 740 public sector grievance arbitration cases that went to hearing. Over 40 percent of these cases were for discipline and discharge, far and away the single biggest issue. The average time between the arbitration hearing and the final award was about two months.

Concerning the issue of 'just cause,' it is unusual for a collective bargaining agreement to define what is meant by 'just cause,' so over the years arbitrators have developed criteria, or tests, which they use as a guide in deciding issues of discipline and discharge. Typically, these tests are applied to the facts of each case which usually differ from grievance to grievance.

The seven tests of just cause are:

1. Did the employer give to the employee forewarning or foreknowledge of the possible disciplinary consequences of the employees' conduct?
2. Was the employer's rule or managerial order reasonably related to the orderly, efficient, and safe operation of the employer's business; and the performance that the employer might properly expect of the employee?
3. Did the employer, before administering discipline, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the employer's investigation conducted fairly and objectively?
5. At the investigation, did the 'judge' obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?

The Montana Arbitrators Association is a non-profit service organization which promotes dispute resolution through mediation, factfinding, and arbitration

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Rep. John Cobb
October 25, 1996
Page 2

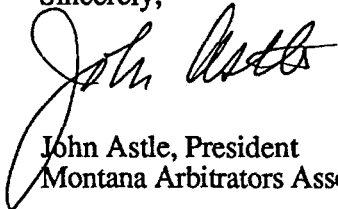
7. Was the degree of discipline administered by the employer reasonably related to the seriousness of the employee's proven offense and the record of the employee in his or her service with the employer?

As you can see, this guide for 'just cause' does not make a distinction between private and public employees.

Finally, it is well known by arbitrators and advocates alike, that it is the arbitrator who has the reputation of "splitting the baby" who is the arbitrator not chosen by the parties. Most labor-management relations advocates, both the employer and the union, want a clear cut, decisive decision so that they do not have to re-arbitrate the issue over and over again. Also, most grievance arbitration cases are decided on the facts presented by the parties, and these facts differ from grievance to grievance.

If you have any questions or would like further information about the process of arbitration, please contact me at telephone 494-3873, or in Butte at 2927 Edwards Street.

Sincerely,



John Astle, President
Montana Arbitrators Association

cc: Michael Dahlem
Eddye McClure

MICHAEL DAHLEM

Attorney at Law

EXHIBIT 9A
DATE 1-27-97
HB 49

616 Helena Avenue ♦ Suite 218 ♦ P.O. Box 1133 ♦ Helena, MT 59624
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Testimony in Support of HB 49 Before the House Education and Cultural Resources Committee--January 27, 1997

HB 49 offers a comprehensive reform of teacher tenure laws in Montana that deserves your support. Tenure has become an issue in Montana, not because teachers do not deserve the same measure of job security provided other public employees, but because the method for appealing teacher termination decisions is lengthy, costly and hyper-technical.

THE PROBLEM DEFINED

At present, a school teacher may challenge a termination decision through a contested case procedure that begins with a hearing before a county superintendent of schools and which then may be appealed to the state superintendent, to a state district court, to a mediator, and finally to the Montana Supreme Court. Except for mediation, the case may be remanded back to the county superintendent for further proceedings at any step in a process that takes years to complete. Elmer Baldridge, for example, was terminated by the Colstrip School District in 1988. His case has been to the Montana Supreme Court three times and is currently pending before a state district court. The Colstrip school district has already spent \$200,000 in that case, excluding the contribution of its insurance company and the costs of transporting the superintendent and trustees to various hearings.

The Billings school district has incurred \$125,000 in legal fees and costs to date in a recent non-tenured teacher termination hearing that lasted 10 days before a county superintendent of schools. The Bozeman school district has spent \$77,000 in legal fees and costs in another 10 day hearing involving a tenured principal. Neither case has yet to proceed beyond OPI.

In addition to the costs of litigation, a school district which loses a teacher termination case faces a damage award for back pay and benefits that could easily exceed \$100,000. This potential cost deters some districts from terminating bad teachers, thereby reducing the quality of education provided to our children.

Not only is the contested case procedure inherently inefficient, a recent decision by the state superintendent has left in doubt the standard by which non-tenured teachers may appeal decisions to non-renew their teaching contracts. Section 20-4-206, MCA requires school trustees, upon request, to provide non-tenured teachers with a statement of the "true reasons" for their non-renewal. Unfortunately, the statute does not define what it is meant

by the word "true". Is it enough that trustees believe the stated reasons are true or must the truth be measured by objective criteria? County superintendents have ruled in both directions.

In *School District No. 2, Billings v. Kittock-Sargent*, 15 Ed.Law 2 (1996), Superintendent Keenan held that the reasons given to a non-tenured teacher must be judged by an abuse of discretion standard. In other words, could a reasonable person believe that the stated reasons are true? In adopting this standard, the state superintendent has created a standard for the review of non-tenured teacher appeals that looks very much like the one established for tenured teachers. If this standard is upheld by our courts, school districts will receive many more appeals from non-tenured teachers.

The statute is flawed in other ways. Section 20-4-206(6), MCA states: "The provisions of this section do not apply to cases in which a nontenured teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed." On its face, this subsection denies a hearing to non-tenured teachers who are non-renewed for financial reasons. Teachers have contended, however, that it is impossible to determine if the true reason is financial without a hearing. Consequently, the statute appears to contradict itself.

HOW HB 49 ADDRESSES THE PROBLEM

HB 49 has been drafted as a compromise between the interests of labor and management. As such, it contains some provisions that one side will embrace and the other side will disdain. In addition, it contains a number of provisions that are not controversial. As introduced, the bill makes the following changes in our tenure laws:

1. HB 49 clarifies the meaning of "same salary" to exclude compensation received for any fringe benefits, extra-duty or extended year contracts.

There is a general consensus within the education community that the same salary provision in 20-4-203 should not apply to compensation received for fringe benefits, extra-duty or extended year contracts. This language is needed, however, to reverse an OPI holding in *Hammer v. Dawson County High School District*, 13 Ed.Law 25 (1994) that salary protection applies to an extended year contract. If same salary protection applies to extra-duty or extended year contracts, school districts may be unwilling to offer such contracts to teachers, knowing that additional salary would need to be paid even after the duties are no longer performed.

2. HB 49 permits a voluntary waiver of the entitlement to same salary protection.

A voluntary waiver is necessary before a school district will temporarily promote a teacher to an administrative position or where a district and a union agree to move salary

dollars into health insurance. Without specific statutory authority, the legality of such waivers is questionable.

3. HB 49 permits school districts to discharge tenured teachers and specialists at any time for good cause.

By repealing Section 20-4-207, MCA, HB 49 gives school districts greater flexibility when making termination decisions. Under current law, a teacher may not be terminated during the term of a contract for any reason other than unfitness, immorality, incompetence or a violation of the policies of the trustees. Under HB 49, the employment of a tenured teacher or specialist may be terminated at any time for bona fide financial or other legitimate business reasons.

The terms unfitness, immorality, incompetence or a violation of the policies of the trustees are difficult to interpret and apply in practice. For example, in one teacher termination case our Supreme Court defined incompetence as "the inability to perform ably and above a minimum level of sufficiency as determined by law within a classroom." *Trustees, Missoula County School District No. 1 v. Carol Anderson*, 7 Ed.Law 180, 183 (1988).

4. HB 49 permits school districts to reduce the salary of an administrator who is returned to the classroom when the district reduces the number of administrators.

Currently, Section 20-4-208, MCA permits a district to reduce an administrator's salary upon transfer to the classroom only in cases of financial exigency or when there is a drop in enrollment. This provision removes these preconditions, offering salary savings to districts who have other reasons to reduce the size of their administrative staffs.

5. HB 49 removes collective bargaining grievances from the jurisdiction of county superintendents.

Section 39-31-306(5), MCA requires that every collective bargaining agreement entered into by a school district contain a grievance procedure culminating in final and binding arbitration. Given this statutory mandate, there is no good reason why grievances which arise under the terms of a collective bargaining agreement should be submitted to a county superintendent for resolution. Given the cost and length of the contested case procedure, arbitration should be the exclusive means to resolve such disputes.

6. HB 49 extends the May 1 deadline for notice of reelection or termination to June 1.

Currently, school districts are required to notify teachers of their reelection or termination by May 1, often before mill levies are passed and proposed budgets are developed. Consequently, some districts adopt motions terminating all non-tenured teachers for financial reasons, only to rescind their action at a subsequent meeting. By providing districts with more time in which to make these decisions, some unnecessary anguish might

be avoided.

7. HB 49 provides a working definition of "good cause" for termination.

HB 49 defines "good cause" for termination as "reasonable job-related grounds for dismissal that are based on a failure to satisfactorily perform job duties, disruption of a school district's operation, or other legitimate business reason." This definition is modeled on language contained in the Wrongful Discharge from Employment Act. As such, it will provide both teachers and school districts with a body of case law on which to rely when presenting arguments to an arbitrator.

8. HB 49 grants tenure to school employees who are required to maintain a specialist certificate.

There are about 100 school psychologists and master's degree school counselors who are required to maintain a Class 6 specialist certificate. These individuals have educational backgrounds comparable to teachers and they were accorded tenure under Section 20-4-203, MCA until the Legislature amended the statute in 1979.

9. HB 49 grants tenure to teachers and specialists after the successful completion of a 180 working day probationary period

As introduced, the bill allows school districts to grant tenure to teachers and specialists after the successful completion of a 180 working day probationary period. Teachers and specialists who have worked this period of time and who are not notified of non-renewal by June 30 following their first year of employment are automatically tenured on that date.

The one year probationary period is actually longer than that served by most state and local government employees including teachers employed by the State of Montana. By reducing the length of time to receive tenure, the proposal increases teacher job security while reducing the impact of the *Massey* decision. Under *Massey*, a tenured teacher may avoid layoff by bumping a non-tenured teacher from his job even though the tenured teacher may have no teaching experience in the area taught by the non-tenured teacher. By reducing the length of time to achieve tenure, school districts will no longer be required to automatically lay off first and second year teachers when reducing staff positions. Instead, the order of layoff will be determined by school board policy or the terms of a collective bargaining agreement.

10. HB 49 permits school districts to dismiss nontenured teachers and specialists at any time with or without cause.

Under current law, teachers and specialists may be discharged during the term of their contract only for immorality, unfitness, incompetence or a violation of the adopted

policies of the trustees. Any discharge may be appealed through the contested case procedure. By making non-tenured teachers and specialists "at will" employees, HB 49 grants school trustees the right to make termination decisions that may not be challenged through litigation, arbitration or an appeal to the county superintendent. It should be noted, however, that if the probationary period is extended beyond 180 days, the "at will" status of teachers and specialists should be dropped from the bill. This change is necessary to avoid the duty of providing unemployment insurance benefits to teachers and specialists without a contract or a reasonable assurance of a contract under Section 39-51-2108, MCA.

11. HB 49 makes binding arbitration the exclusive procedure for appealing tenured teacher and specialist termination decisions.

By limiting a teacher's or specialist's appeal rights to final and binding arbitration, the proposal reduces the length and cost of the current appeals process while preserving the right of the parties to select their own impartial decision-maker. By mutual agreement, this person could be a county superintendent of schools, in which case the county superintendent's decision would be final and binding on the parties.

An arbitrator's fee is typically between \$3,000 and \$5,000 and a decision is usually rendered within two months of a hearing. The cost of arbitration would be shared by the school district and the teacher or specialist or their exclusive representative, unless a different cost allocation is agreed upon by the parties.

HB 49 also limits the remedies that may be ordered by an arbitrator to reinstatement and compensation for back pay and fringe benefits. A school district may not be required to provide compensation for attorney fees, punitive damages, pain and suffering, compensatory damages or emotional distress.

SOME OTHER REASONS WHY HB 49 IS GOOD PUBLIC POLICY

Opponents of binding arbitration often argue for the value of judicial review. Our experience with teacher termination cases, however, shows that appealability is, at best, of limited value.

This conclusion follows from the fact that ARM 10.6.125(4) states: "The state superintendent may not substitute his/her judgment for that of the county superintendent as to the weight of the evidence on questions of fact." Likewise, Section 2-4-704(2), MCA states: "The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Because termination decisions are heavily dependent on findings of fact, it is unlikely that such decisions will be reversed on appeal.

A review of the thirty tenured teacher termination cases reported in the State Reporter of Education Law from 1982 to present confirms this conclusion. Of the thirty reported cases, county superintendents ruled in favor of school boards nineteen times.

Excluding six cases which have either settled on appeal or are still in the appeal process, the county superintendents' decisions have been affirmed in twenty-two of twenty-four cases. The two cases where the decisions were reversed both involved questions of law. In contrast, OPI decisions were affirmed on appeal in only ten of fifteen cases and district court decisions were affirmed in only nine of fifteen cases. These statistics strongly support the conclusion that the initial fact finding, whether made by a county superintendent or an arbitrator, is unlikely to be overturned on appeal. Thus, the importance of appealability is open to question.

These statistics, however, do not tell the whole story. Despite the fact that the initial determination has been affirmed on appeal in 92% of the reported cases, the appeal process in many cases has been long and costly. For example, in eleven cases the county superintendent's decision was reversed or remanded by OPI. In seven cases, OPI's decision was reversed or remanded by the district court. In six cases, the district court's decision was reversed or remanded by the Supreme Court.

THE ARBITRATION OF DISPUTES PROMOTES LOCAL CONTROL

The practice of arbitration promotes local control by allowing the school district and the employee or the employee's union to determine the method by which an impartial decision maker is selected to decide the controversy. At present, the choice of arbitration or an appeal to the county superintendent is entirely at the option of the teacher or the teacher's union. Once an administrative appeal is filed, either party may disqualify the county superintendent without cause. It is the county superintendent who then selects a replacement. Upon receiving a decision, either party may appeal to OPI, a state agency not beholden to the community. After receiving a decision from OPI, either party may appeal to state district court. In such an appeal, venue is proper in Lewis and Clark County or in the county where the dispute arose. Consequently, the dispute may be decided by a judge who is not a member of the community. Finally, either party may appeal the judge's decision to the Montana Supreme Court, a group of seven justices, none of whom may be familiar with local conditions.

It should also be noted that courts across the country have held that public policy favors arbitration as an alternative to litigation. In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), for example, the United States Supreme Court upheld an agreement to arbitrate an age discrimination complaint filed by a securities representative. In *Austin v. Owens-Brockway Glass Container, Inc.*, 78 F.3d 875 (4th Cir. 1996), the Fourth Circuit Court of Appeals followed *Gilmer* in holding that where employees are required to arbitrate discrimination claims under a collective bargaining agreement, a worker may not sue under the Americans with Disabilities Act. Likewise, in *Kuehner v. Dickinson & Co.*, 84 F.3d 316 (9th Cir. 1996), the Ninth Circuit Court of Appeals held that an employee could be required to arbitrate a claim arising under the Fair Labor Standards Act.

In closing, I would like to address the contention that Rep. Cobb's proposal might

violate Article X, Section 8 of the Montana Constitution by granting to arbitrators the power to overturn termination decisions made by school trustees. A similar challenge to the current contested case procedure was rejected by the Montana Supreme Court in *School District No. 12 v. Hughes and Colburg*, 170 Mont. 267 (1976). In that case, the Court held that:

"Local boards of trustees have always been subject to legislative control....In *Abshire*, for example, the Court held that a local board of trustees could not impose a mandatory retirement age that differed from the state statute. *Wyatt* held that, by failing to follow the statutes in dismissing a teacher, the board's dismissal was void for want of jurisdiction. Statutory vacation benefits were extended to noncertified school district employees in *Teamsters Local No. 45*. Thus, local boards have been held subject to statutory requirements...." *Id.* at 273-274.

If our current system of administrative and judicial review of trustee termination decisions has survived constitutional challenge, there is little reason to believe that this proposal would meet a different fate. For the reasons cited above, I believe that HB 49 better preserves the local control envisioned by the framers of the 1972 Montana Constitution and, for that reason, merits your support.



Michael Dahlem

MICHAEL DAHLEM

Attorney at Law

EXHIBIT 9B
DATE 1-27-97
B 49

616 Helena Avenue ♦ Suite 218 ♦ P.O. Box 1133 ♦ Helena, MT 59624
(406) 443-8200 ♦ Fax (406) 443-8228

WHY TENURE REFORM IS IN THE NATIONAL SPOTLIGHT

by Dr. Michael Dahlem, Esq.

During the debate over HB 49, you will undoubtedly be told that other states are considering major changes in their tenure laws, including proposals to repeal tenure outright. When considering these developments, bear one fact in mind: The problem with tenure is not a teacher's right to good cause for termination, but the length and cost of the appeal process. HB 49 solves this problem by replacing an inefficient contested case procedure with final and binding arbitration.

Here is what the proponents of tenure reform in other states are saying:

--"Typically, school districts spend \$50,000 to \$100,000 pursuing tenure charges against teachers in New Jersey; litigation can take several years before the teacher exhausts her appeals." Mark Walsh, "Ax Lifetime Tenure, N.J. School Boards Group Urges," *Education Week on the Web*, April 3, 1996.

--"If a bad teacher gets into the system today and receives tenure after three years, it is nearly impossible to get rid of that teacher. Only truly egregious cases are likely to lead to attempts at dismissal. The reason is simple; it can cost a fortune. According to Broward County school official Ronald Wright, it can take two to three years and \$20,000 to \$60,000 in legal fees, to complete all the hearings to fire a bad teacher." Mark Merrill, "End Teacher Tenure Program," *Jacksonville Business Journal*, December 23, 1996.

--"In 1985, school officials in La Mesa, Calif., reached the end of their rope. After documenting more than 400 reasons why Grossmont Union school district deemed Juliet Ellery unfit to teach high school biology and English--including that she belittled students and ignored their questions--the school board there fired her. The teacher disagreed with the decision and appealed it. Eight years later and more than \$300,000 in fees later, the district finally saw the last of Ms. Ellery: In 1993, the teacher exhausted her last appeal." Joanna Richardson, "Critics Target State Teacher-Tenure Laws," *Education Week*, March 1, 1995.

These horror stories are also occurring in Montana--not because of teacher tenure--but because of an appeal process that Montana State Supreme Court Justice James Nelson has called "technical, cumbersome, time-consuming, costly, frustrating and inefficient." *Baldrige v. Rosebud County School District 19*, 13 EdLaw. 18, 23 (1994). The answer is to this serious problem is obvious: Retain teacher tenure, but reform the process for appealing teacher termination decisions. HB 49 represents the best means to this end.



Elementary School
(406) 477-6431

Ray S. Phipps, Ed.D.
Superintendent

Lame Deer Public School

District No. 6 Rosebud County
P.O. Box 96
Lame Deer, Montana 59043
Phone: (406) 477-6305

EXHIBIT 10
DATE 1-27-97
#B 49

High School
(406) 477-8900

James Walksalong
Board Chairman

Testimony of Bertha Other Bull, Vice Chairman Lame Deer School District No. 6 Board of Trustees in support of HB 49 January 27, 1997

As Vice chairman of Lame Deer School District No. 6 Board of Trustees, I want you to know that our school board strongly supports the passage of HB 49. We support the bill because it makes a number of technical improvements in our tenure laws that will benefit teachers and districts alike.

Currently, our district is embroiled in litigation with two non-tenured teachers who were non-renewed a year ago for financial reasons. Even though Section 20-4-206(6), MCA states that the right of appeal does not apply when the reasons for non-renewal are financial, these teachers have appealed their case to OPI stating that they have an "absolute" right to a hearing regardless of the reasons given by the school board. If HB 49 becomes law, trustees will be able to non-renew the contracts of non-tenured teachers without facing lengthy and costly appeals.

In addition, HB 49 will restrict tenured teachers and specialists who are terminated by a school district to a single arbitration hearing which can be concluded in a matter of months. Currently, teachers in bargaining units have the right to choose between arbitration and an appeal to the county superintendent of schools. If the teacher elects to appeal to the county superintendent, either party may appeal the county superintendent's decision to OPI, the district court and the Montana supreme court. Cases drag on for years and if the district loses, it could be forced to provide back pay and benefits in the hundreds of thousands of dollars. The potential cost, distractions from our real mission and the hours of administrative staff time required of this process has led some to conclude that it is impossible to terminate a tenured teacher. A system of binding arbitration should prove that conclusion false.

Finally, we want to go on record in support of an amendment to HB 49 to extend the probationary period for non-tenured teachers from one to two years. The school board believes that this additional time is necessary to adequately evaluate the abilities of a new teacher before tenure is granted. With this change, I ask you to give HB 49 a "Do Pass" recommendation.

EXHIBIT 11
DATE 1-27-97
HB 49

Heart Butte School

School District No. 1 - Pondera County

January 27, 1997

TO: Montana State Legislature
FR: Stan Juneau, Superintendent, Heart Butte Schools
RE: House Bill No. 49

The purpose of this correspondence is to endorse the content and the intent of House Bill No. 49 entitled "an act generally revising Montana teacher tenure laws and contested cases procedures..."

I am in support of House Bill No. 49 because it provides an opportunity for teachers and specialists to receive tenure in a shorter period of time than the law presently allows, it allows for dismissal of employment for good cause, removes the jurisdiction of a county superintendent to decide disputes arising from a collective bargaining agreement, and establishes a procedure for arbitration not covered by a collective bargaining agreement, as well as other proposed changes to a tenure law that was established at a different period of time for a different set of circumstances.

Under the current system, a teacher can continue to appeal a termination decision through a system that becomes very expensive for tax payers in any given school district. For school districts, such as School District No. 1 at Heart Butte, property taxpayers are very limited, or non-existent, so dollars that could be allocated for the classroom and for students benefit become unavailable for teacher materials, textbooks and supplies.

House Bill 49 will also allow an arbitrator to make a final and binding decision within a reasonable time. This decision and system is important for planning and operating a school system, for being able to develop a curriculum and course offering for students that is consistent with accreditation requirements, and to finalize a budget that addresses each person's salary and Board concerns.

Because of the above stated reasons, I wholeheartedly recommend the passage of House Bill No. 49.



"Home of the Warriors"

Phone (406) 338-221
FAX (406) 338-208

P.O. Box 25
Heart Butte, Montana 59444

CIRCLE PUBLIC SCHOOLS

District #1
301 South Meridian St.
P.O. Box 99
Circle, MT 59215

EXHIBIT 12
DATE 1-27-97
HB 49

Terry Quintus
Superintendent/H.S. Principal
406-485-2332/406-485-3600

January 27, 1997

Peggy Ames Nerud
Elementary Principal
406-485-2140

To: House Education Committee Members

This letter is drafted to show our support for House
Bill 49. We feel that the bill would reduce costly litigation
over trustee decisions to terminate or non renew teacher
contracts.

Sincerely,
E. James Wolff

E. James Wolff
School Dist. #1 Chairman

Terry Quintus

Terry Quintus
School Dist. #1 Superintendent



MONTANA SCHOOL BOARDS ASSOCIATION

House Bill 49 Fact Sheet

One South Montana Ave.
Helena, Montana 59601
Telephone: 406/442-2180
FAX: 406/442-2194

Robert L. Anderson, Executive Director

EXHIBIT 13

DATE 1-27-97

H.B. 49

1. ***Proposes to reduce the length of time necessary to achieve tenure*** from ~~3 full school years~~ ***to 180 days***. Even if the bill is amended to provide for tenure after 2 full school years, we question why, if tenure is a potential problem, the Legislature should consider expanding it by granting tenure faster than under current law?

Among the states that identify a length of service prior to tenure, the length of required service takes:

1. 2 years (9 states);
2. 3 years (32 states, ***including Montana***);
3. 4 years (3 states); or
4. 5 years (2 states).

If anything, the length of time it takes for a teacher to achieve tenure should be longer than under current law, and certainly not shorter.

2. ***Proposes to expand tenure to cover specialists, who do not receive tenure under current law***. If tenure is potentially a problem, why should the legislature consider expanding tenure rather than fixing it? At a time when states such as Alaska, Arizona, California, Connecticut, Illinois, Minnesota, North Carolina, New Jersey, Pennsylvania, South Dakota, Virginia, and Wisconsin (Milwaukee County) are all proposing and/or implementing proposals to restrict tenure and/or lengthen the time necessary to achieve tenure, ***Montana stands alone in considering a bill that proposes a reduction in the amount of time necessary to achieve tenure and extending tenure to individuals not covered under current law (specialists)***. The proposal to extend tenure to specialists is an attempt to reverse what the Montana Legislature accomplished in 1979 with the abolishment of tenure for specialists, with no specified rationale for the reversal.
3. ***Proposes to cut county superintendents out of the entire act and substitute an unfunded, expensive process of binding arbitration***. Rather than fix the problems associated with the current appellate process as recently outlined by the Montana Supreme Court in a 1994 decision, this bill "throws the baby out with the bath water" in eliminating the involvement of county superintendents and the state superintendent from such reviews, and turning such decisions over to arbitrators without any process of meaningful judicial review. ***Current Montana law does not require binding arbitration of employment disputes in districts without union representation. This aspect of the bill will place an unfunded mandate on our members in smaller districts without union representation of its teachers.***

Both the county and state superintendents are funded under current, ongoing appropriations. The aspect of their duties that involve review of termination decisions is not predominant among other duties. As a result, there will be no cost savings associated with removing these individuals from the judicial review of termination decisions. To the contrary, expenses are likely to increase. ***Arbitrations are fairly expensive, with a typical arbitrator charging \$750.00 per day + expenses for services***. It is not out of the ordinary for the costs of such services to run in the neighborhood of \$4,000.00. These costs do not include the costs of legal representation in such proceedings. ***These costs will be devastating on virtually all of our smaller districts, and will interfere with our members' rights to manage employees.***

The Montana School Boards Association respectfully requests that the Committee table this bill.

MONTANA RURAL EDUCATION ASSOCIATION
Testimony In Opposition to HB 49

The Montana Rural Education Association (MREA) recognizes Rep. Cobb's efforts to provide reform in these difficult areas of teacher tenure and teacher termination and we appreciate the dialogue which his efforts have brought about. MREA has concluded, however, that the major provisions of this bill do not benefit rural school districts and for this reason we appear in opposition.

1. The 180 day probationary period is too short.

a. Teachers do not work on a "probationary" basis under the current law. They are term employees for their first 3 years with a district, with yearly contracts providing full job protection during the term. Being a term employee is not the same as being a probationary or "at will" employee.

b. This bill would put teachers on a probationary basis for their first year; they could be fired at any time, but they could also leave at any time. This provision is detrimental to rural schools, who may have a difficult time finding replacement teachers or even qualified substitutes in the middle of the year.

c. 180 days is insufficient time for a new teacher to become proficient in a teaching position, particularly in a rural school where the teacher may be expected to teach a multi-grade class, where there generally are not other teachers teaching the same grade level who can provide support and assistance and where there may not be an administrator to assist the teacher in achieving success. This provision invites the nonrenewal of teachers with potential.

d. 180 days is insufficient for a school to be expected to make a permanent decision about a teacher. Teaching is a critically important job. It is particularly critical in small rural schools where the students may expect to have the same teacher for 3, 5 or even 8 years. Rural schools, who particularly need competent teachers, and who have the most difficulty attracting them and then assessing them within the 3 year period, stand to lose the most by the reduction of the 3-year nontenure period.

In conclusion, this provision places our small schools at a distinct disadvantage. MREA believes the reduction of the 3 year period of term employment will encourage unnecessary teacher turnover and act in the detriment of rural school districts. Absent a compelling reason for reducing the period of nontenure status, MREA urges the committee to retain the three year period.

Recommendation: MREA does not support the 180 day probationary period or the 2 years of term employment. We strongly oppose anything but 3 years or more of term employment prior to the award of tenure. We have seen no compelling reason for changing this and believe it would to the extreme detriment of rural schools and their teachers.

2. Eliminate specialists. We know of no compelling reason for tenuring specialists. Specialists do not "teach," but provide support services in the school setting. They are, e.g., speech pathologists and school psychologists. The reasons why tenure was originally granted to teachers - to insure academic freedom in teaching and prevent political dismissals - don't apply to specialists, who do not teach and who are protected by the Montana Human Rights Act against political firings. There is no legal basis for providing them with greater rights than other, nonteaching public employees.

Recommendation: Leave law as it is regarding specialists.

3. Retain good cause standard.

MREA supports a clear definition of good cause for the dismissal of teachers as in the best interests of school districts and teachers. Lack of clarity in the current law invites litigation. MREA supports the definition of "good cause" which appears in the bill. The fact that the definition is used in the Wrongful Discharge Act is a positive step toward the development of clear and consistent standards of performance and dismissal for all Montana employees.

If anything, we would suggest an even more detailed listing of reasons for teacher discipline or termination. The more clarity we can bring to this process the better off both teachers and school districts will be. Under the current law, a teacher's first defense will always be that the infraction is not a terminable offense or that he or she did not have notice of any prohibition against the action engaged in. It would be a real clarification of this law if the definition of "good cause" were more detailed so that teachers and districts alike understood the standards of conduct expected and the basis for disciplinary action.

Recommendation: Retain "good cause" as standard, with definition as per the Wrongful Discharge Act, with additional specific grounds.

4. MREA does not support forced arbitration. MREA does not dispute the need for a more streamlined process for appeals of teacher terminations. Arbitration, however, does not help rural schools nor, it would appear, rural teachers, who would have to pay for half the cost of the arbitration.

Arbitration is costly, and it places important school issues (as well as issues of state law) in the hands of outsiders who may know nothing of our schools or standards. This provision should not be forced on all school districts, at least without considering the option of streamlining the existing administrative and legal process.

Those districts who collectively bargain with a bargaining representative have this by virtue of existing legislation. Other teachers can decide to collectively bargain if they want binding arbitration as their only option. Those who would prefer a local school official such as the county superintendent to review their decisions should have that option. Arbitration is always an option should the parties mutually agree to it in a given situation. MREA urges the committee to look into ways to streamline the existing process, which utilizes Montana school officials and the Montana courts to resolve issues.

Recommendation: MREA cannot support forced arbitration of teacher dismissal issues.

HOUSE OF REPRESENTATIVES

COMMITTEE ON EDUCATION

ROLL CALL

DATE 1-27-97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Alvin A. Ellis, Chairman	X		
Rep. Peggy Arnott	X		
Rep. Dan W. Harrington	X		
Rep. Paul Bankhead	X		
Rep. Matt Denny	X		
Rep. Kim Gillan	X		
Rep. Antoinette R. Hagener	X		
Rep. George Heavy Runner	X		
Rep. Sam Kitzenberg	X		
Rep. Bob Lawson	X		
Rep. Gay Ann Masolo	X		
Rep. Linda McCulloch	X		
Rep. Norm Mills	X		
Rep. William Rehbein	X		
Rep. John "Sam" Rose	X		
Rep. Richard D. Simpkins	X		
Rep. Joe Tropila	X		
Rep. Allan Walters	X		

**MONTANA HOUSE OF REPRESENTATIVES
HOUSE COMMITTEE ON EDUCATION
VISITORS REGISTER**

DATE 1-27-97

BILL NO. HB 49

SPONSOR(S) REP. COBB

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

**PLEASE
CIRCLE**

NAME

ADDRESS

REPRESENTING

POI	Don Waldron	Helena	MREA
POI	LANCE MELTON	HELENA	MSBA
POI	Michael Dahlem	HELENA	Self
POI	Robert Smith	Hays, MT	Hays/Lodge Pole S.D.
POI	Robert Fox	HAYS, MT.	HAYS/Lodge Pole S.D.
POI	Erin Deane	Helena	MEA
POI	Terry Minow		MEA
POI	Ray S. Phipps	Lame Deer	Lame Deer Schools
POI	Cathy Swift	Helena	MREA
POI	Phil Reinemer	Circle	Self
POI	Loren Kruger	Helena	S Am.
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POI			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By VICE-CHAIRMAN PEGGY ARNOTT, on February 14, 1997, at 3:00 P.M., in Room 312-1.

ROLL CALL

Members Present:

Rep. Alvin A. Ellis, Jr., Chairman (R)
Rep. Peggy Arnott, Vice Chairman (Majority) (R)
Rep. Dan W. Harrington, Vice Chairman (Minority) (D)
Rep. Paul Bankhead (R)
Rep. Matt Denny (R)
Rep. Kim Gillan (D)
Rep. Antoinette R. Hagener (D)
Rep. Sam Kitzenberg (R)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Linda McCulloch (D)
Rep. Norm Mills (R)
Rep. William Rehbein, Jr. (R)
Rep. John "Sam" Rose (R)
Rep. Richard D. Simpkins (R)
Rep. Joe Tropila (D)
Rep. Allan Walters (R)

Members Excused: Rep. George Heavy Runner

Members Absent: None.

Staff Present: Connie Erickson, Legislative Services Division
Alberta Strachan, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJR 21 (2/13/97); HJR 23
(2/13/97); HB 523 (2/12/97).
Executive Action: HJR 21; HJR 23; HB 49; HB 198;
HB 436; HB 491; SB 71.

HEARING ON HJR 21

Opening Statement by Sponsor: REP. MATT DENNY, H.D. 63
introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: .2.}

Jim English, Fergus County School Board Association. EXHIBIT 4.

{Tape: 1; Side: 2; Approx. Time Count: 24.5; Comments: Mr. English provided testimony from Shirley M. Barrick, Fergus County Superintendent of Schools, Lewistown.}

Bill Reber, Lewistown resident.

{Tape: 1; Side: 2; Approx. Time Count: 26.5.}

Rachel Vielleux, Missoula County Superintendents Office.

{Tape: 1; Side: 2; Approx. Time Count: 27.4.}

Opponents' Testimony: None.

{Tape: 1; Side: 2; Approx. Time Count: 29.3.}

Informational Testimony: None.

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 29.4.}

Closing by Sponsor: REP. MCCULLOCH closed on the bill.

{Tape: 1; Side: 2; Approx. Time Count: 31.9.}

EXECUTIVE ACTION ON HB 49

Motion: REP. ELLIS MOVED HB 49 DO PASS.

{Tape: 1; Side: 2; Approx. Time Count: 33.4.}

Motion: REP. ELLIS moved to adopt the Ellis amendments.

{Tape: 1; Side: 2; Approx. Time Count: 33.6.}

Discussion:

{Tape: 1; Side: 2; Approx. Time Count: 35.2.}

Vote: Question was called. Motion carried 13-5 to adopt the Ellis amendments by roll call vote with REP. HEAVY RUNNER voting by proxy.

{Tape: 2; Side: 1; Approx. Time Count: 7.2.}

Motion: REP. ELLIS MOVED HB 49 DO PASS AS AMENDED.

{Tape: 2; Side: 1; Approx. Time Count: 8.9.}

Discussion:

{Tape: 2; Side: 1; Approx. Time Count: 9.8.}

Vote: Question was called. Motion carried 11-7 on a roll call vote with REP. HEAVY RUNNER and SIMPKINS voting by proxy.

{Tape: 2; Side: 1; Approx. Time Count: 13.2.}

EXECUTIVE ACTION ON HB 198

Motion/Vote: REP. PAVLOVICH MOVED HB 198 BE TABLED. Motion carried 17-1 with REP. REHBEIN voting no.

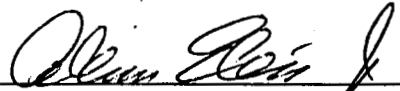


HOUSE STANDING COMMITTEE REPORT

February 17, 1997

Page 1 of 8

Mr. Speaker: We, the committee on Education report that House Bill 49 (first reading copy -- white) do pass as amended.

Signed: 
Alvin Ellis, Jr. Chair

And, that such amendments read:

1. Title, lines 5 through 14.

Following: "PROCEDURES;"

Strike: remainder of line 5 through "PERIOD" on line 12

Insert: "REMOVING JURISDICTION OF THE OFFICE OF PUBLIC
INSTRUCTION TO HEAR APPEALS AND TO DECIDE DISPUTES ARISING
FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED
BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39,
CHAPTER 31,"

Following: "EMPLOYMENT" on line 12

Insert: "OF A TENURE TEACHER"

Following: "CAUSE;"

Strike: remainder of line 12 through "AGREEMENT;" on line 14

2. Title, line 15.

Strike: "OR SPECIALIST"

Following: "TERMINATION"

Insert: "INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A
COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39,
CHAPTER 31,"

3. Title, lines 16 and 17.

Strike: "NOT" on line 16 through "AGREEMENT" on line 17

4. Title, line 19.

Following: "AGREEMENT;"

Insert: "CLARIFYING THAT A DISTRICT MAY TERMINATE THE EMPLOYMENT
OF A NONTENURE TEACHER AT THE CONCLUSION OF A SCHOOL FISCAL
YEAR WITH OR WITHOUT CAUSE UPON PROPER NOTICE; CLARIFYING

Committee Vote:

Yes 11, No 7.

2/17
me
371030SC.Hgd

42

THAT A DISTRICT MAY DISMISS FOR GOOD CAUSE A TENURE OR
NONTENURE TEACHER BEFORE THE EXPIRATION OF A CONTRACT;
CLARIFYING THAT A DISTRICT MAY REDUCE THE SALARY OF A
TEACHER SERVING IN AN ADMINISTRATIVE POSITION WHO IS
ASSIGNED TO A TEACHING POSITION WHEN A DISTRICT REDUCES THE
SIZE OF ITS ADMINISTRATIVE STAFF;"

Following: "SECTIONS"

Insert: "20-3-107,"

5. Title, line 20.

Following: "20-4-205,"

Insert: "20-4-206, 20-4-207, AND"

Strike: ", AND 20-7-456"

Strike: "REPEALING SECTIONS 20-4-206 AND 20-4-207, MCA;"

6. Title, line 21.

Strike: "AND A RETROACTIVE APPLICABILITY PROVISION"

7. Page 1.

Following: line 23

Insert: "Section 1. Section 20-3-107, MCA, is amended to read:

"20-3-107. **Controversy appeal.** (1) The superintendent of
public instruction shall decide matters of controversy when they
are appealed from:

(a) a decision of a county superintendent rendered under
the provisions of 20-3-210, except for a decision of a county
superintendent or an arbitrator in a teacher termination case; or

(b) a decision of a county transportation committee
rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make ~~his~~
a decision on the basis of the transcript of the fact-finding
hearing conducted by the county superintendent or county
transportation committee and documents presented at the hearing.
The superintendent of public instruction may require, if ~~he deems~~
considered necessary, affidavits, verified statements, or sworn
testimony as to the facts in issue. The decision of the
superintendent of public instruction ~~shall be~~ is final, subject
to the proper legal remedies in the state courts. ~~Such~~ The
proceedings ~~shall~~ must be commenced no later than 60 days after
the date of the decision of the superintendent of public
instruction.

(3) In order to establish a uniform method of hearing and
determining matters of controversy arising under this title, the
superintendent of public instruction shall prescribe and enforce
rules of practice and regulations for the conduct of hearings and
the determination of appeals by all school officials of the
state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, ~~he~~ the superintendent of public instruction shall appoint a ~~hearing~~ hearings examiner as provided in 2-4-611 and the decision of the ~~hearing~~ hearings examiner constitutes the superintendent's final order except as provided in this subsection. ~~Such~~ The final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7."

Renumber: subsequent sections

8. Page 1, line 26.

Strike: "and specialist"

Strike: "-- definitions -- waiver"

Strike: "(a)"

9. Page 1, line 27.

Strike: "and subsection (1)(b) of this section"

Following: "~~whenever~~"

Insert: "whenever"

10. Page 1, line 29 through page 2, line 15.

Following: "~~be~~"

Strike: remainder of line 29 through "~~be~~" on page 2, line 15

Insert: "has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be"

Renumber: subsequent subsections

11. Page 2, lines 16, 17, 19, 20, 21, 22, and 25.

Page 3, lines 8, 10, 18, 23, 24 through 25, and 26.

Page 4, lines 1, 3, 8, 9, 10, 20, 21, 22, 24, and 26.

Page 5, lines 1, 11, 13, 15, 22, 23, 25, 26, 29, and 30.

Following: "teacher"

Strike: "or specialist"

12. Page 2, line 23.

Page 5, lines 12 and 28 and 29.

Following: "teachers"

Strike: "or specialists"

13. Page 2, line 27 through page 3, line 5

Strike: subsections (7) and (8) in their entirety

14. Page 3, line 19.

Page 4, line 7.

Page 5, lines 2 and 18.

Page 5, line 30 through page 6, line 1.

Page 8, line 11.

Following: "teacher's" or "teacher's"

Strike: "or specialist's"

15. Page 4, line 5.

Following: "~~law~~"

Insert: "the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, who may appoint a qualified attorney as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. If the employment of the teacher is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a tenure teacher shall appeal a decision to terminate an employment contract to"

16. Page 4, lines 6 and 7.

Strike: the first "teacher" on line 6 through "the" on line 7

17. Page 4, lines 7 and 8.

Following: "If" on line 7

Strike: the remainder of line 7 through "if" on line 8

18. Page 4.

Following: line 13

Insert: "(6) In a termination involving a teacher whose employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, either the teacher or the trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced no later than 60 days after the date of the decision of the county superintendent."

Renumber: subsequent subsections

19. Page 4, line 16.

Strike: "A"

Insert: "In a termination involving a teacher whose employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a"

20. Page 5.

Following: line 19

Insert: "Section 5. Section 20-4-206, MCA, is amended to read:
"20-4-206. Notification of nontenure teacher reelection --

~~acceptance -- termination and statement of reason.~~ (1) The trustees shall provide written notice by May June 1 to all ~~nontenure teachers who have~~ each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year. A ~~nontenure~~ teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A ~~nontenure~~ nontenure teacher who receives notification of ~~his~~ reelection for the ensuing school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to ~~so~~ notify the trustees within 20 days may be considered constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered position.

(3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause. ~~When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of the notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination.~~

~~(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that the period may be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.~~

~~(5) If, after a hearing, the county superintendent determines that the reasons are not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.~~

~~(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed."~~

Section 6. Section 20-4-207, MCA, is amended to read:

"20-4-207. **Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a teacher before the expiration of ~~his~~ the teacher's employment contract for

~~immorality, unfitness, incompetence, or violation of the adopted policies of such trustees good cause.~~

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of ~~his~~ the right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 10 days appeal ~~such the dismissal to the county superintendent. Following such appeal, a hearing must be scheduled within 10 days and held within 30 days after the appeal, except that the period may be extended upon agreement between the teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal under the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title~~

39, chapter 31. If the employment of the teacher is covered by a collective bargaining agreement, a tenure teacher shall appeal a decision to terminate an employment contract to an arbitrator."
Renumber: subsequent sections

21. Page 6, line 27.

Strike: "or" through "20-4-204"

Insert: "who is transferred to a teaching position under this section must be offered the next comparable administrative position for which the tenure teacher is endorsed that becomes available in the district"

22. Page 7, line 1.

Strike: ", 20-4-204,"

23. Page 7, line 3.

Following: "county."

Insert: "Only a county superintendent who possesses the qualifications of 20-3-201(2) may hear controversies related to teacher termination."

24. Page 7, line 9.

Following: "~~title~~."

Insert: "When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced not later than 60 days after the date of the decision of the county superintendent."

25. Page 7, line 25.

Strike: "The"

Insert: "Except for teacher termination cases, the"

26. Page 7, line 27.

Following: "instruction."

Insert: "In teacher termination cases, an appeal may be filed with the district court of the county in which the teacher was employed no later than 60 days after the date of the decision of the county superintendent. If an appeal is filed, the county superintendent shall provide a transcript of the hearing and any other documents entered as testimony at the hearing to the district court."

27. Page 8, lines 1 through 13.
Strike: sections 6 and 7 in their entirety
Renumber: subsequent sections

28. Page 8, lines 19 and 20.
Strike: "-- applicability"
Following: "1997" on line 19
Strike: remainder of line 19 through "year" on line 20

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

COMMITTEE ON EDUCATION

DATE 2-14-97 BILL NO. HB 49 NUMBER 1

MOTION: Amendments

NAME	AYE	NO
Rep. Alvin A. Ellis, Jr., Chairman	X	
Rep. Peggy Arnott	X	
Rep. Dan W. Harrington		X
Rep. Paul Bankhead	X	
Rep. Matt Denny	X	
Rep. Kim Gillan		X
Rep. Antoinette R. Hagener	X	
Rep. George Heavy Runner		X
Rep. Sam Kitzenberg		X
Rep. Bob Lawson	X	
Rep. Gay Ann Masolo	X	
Rep. Linda McCulloch		X
Rep. Norm Mills	X	
Rep. William Rehbein, Jr.	X	
Rep. John "Sam" Rose	X	
Rep. Richard D. Simpkins	X	
Rep. Joe Tropila	X	
Rep. Allan Walters	X	

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

COMMITTEE ON EDUCATION

DATE 2-14-97 BILL NO. HB49 NUMBER 2

MOTION: Do Pass As Amend

NAME	AYE	NO
Rep. Alvin A. Ellis, Jr., Chairman	X	
Rep. Peggy Arnott		X
Rep. Dan W. Harrington		X
Rep. Paul Bankhead	X	
Rep. Matt Denny	X	
Rep. Kim Gillan		X
Rep. Antoinette R. Hagener		X
Rep. George Heavy Runner		X
Rep. Sam Kitzenberg		X
Rep. Bob Lawson	X	
Rep. Gay Ann Masolo	X	
Rep. Linda McCulloch		X
Rep. Norm Mills	X	
Rep. William Rehbein, Jr.	X	
Rep. John "Sam" Rose	X	
Rep. Richard D. Simpkins	X	
Rep. Joe Tropila	X	
Rep. Allan Walters	X	

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COMMITTEE-- (S) EDUCATION & CULTURAL RESOURCES

CHAIRMAN--DARYL TOEWS

SECRETARY--JANICE SOFT/442

NORMAL SCHEDULE => SITE: ROOM 402

DAYS: M,W,F

TIME: 3:00 P.M.

- BILL NO--		REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	-----	REREFERRED	----	DATE READ
HB0025	EWER, DAVID	1/20	1/27		AUTHORIZE CAPITALIZATION OF SCHOOL BUILDING RESERVE FOR UP TO 5 YEARS	CONCUR	01/29 VOTE: 11-0		1/30
HB0028	ROSE, JOHN	1/21	1/31		REQUIRE OPI & SCHOOL DISTRICT TRUSTEES TO DISCLOSE STUDENT ASSESSMENT DATA	CONCUR AS AMENDED	02/10 VOTE: 9-1		2/12
HB0049	ELLIS, ALVIN	3/03	3/19		GENERALLY REVISE MONTANA TEACHER TENURE LAWS AND CONTESTED CASE PROCEDURES	CONCUR AS AMENDED	03/19 VOTE: 11-0		3/20
HB0052	KITZENBERG, SAM	1/24	2/05		ALLOWING SCHOOL DISTRICTS TO CONDUCT LESS THAN 180 DAYS OF PUPIL INSTRUCTION		VOTE:		
HB0077	SIMPKINS, DICK	1/22	1/31		REQUIRE PLEDGE OF ALLEGIANCE WITH RIGHT OF REFUSAL FOR TEACHER OR STUDENT	CONCUR AS AMENDED	02/10 VOTE: 6-4		2/12
HB0079	SIMPKINS, DICK	2/12	3/05		PROHIBIT BOARD OF PUBLIC EDUCATION TO IMPLEMENT RULES WITHOUT FUNDING SOURCE	TABLED ON	03/07 VOTE: 7-1		
HB0104	HAGENER, TONI	2/03	2/19		EDUCATION COSTS PAID BY AGENCY RESPONSIBLE FOR OUT-OF-STATE PLACEMENT	CONCUR AS AMENDED	02/19 VOTE: 10-0		2/20
HB0134	JOHNSON, JOHN	2/13			TEACHERS' RETIREMENT BOARD, GENERAL HOUSEKEEPING BILL		VOTE:	STATE ADMIN.	
HB0180	BOHLINGER, JOHN	1/29	3/07		AUTHORIZE SUSPENSION OF LICENSE FOR DEFAULTING ON STUDENT LOAN	CONCUR AS AMENDED	03/12 VOTE: 6-5		3/13
HB0183	MASOLO, GAY ANN	1/31	2/17		CHANGING SCHOOL FIRE DRILLS TO SCHOOL DISASTER DRILLS	CONCUR AS AMENDED	03/10 VOTE: 8-0		3/11
HB0192	HANSON, SONNY	1/23	2/12		REQUIRE BIENNIAL REPORT ON STATE EDUCATIONAL SYSTEMS BY BOARD OF EDUCATION	TABLED ON	03/07 VOTE: 6-2		

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By CHAIRMAN DARYL TOEWS, on March 19, 1997, at 3:13 p.m., in Room 402.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
Sen. C.A. Casey Emerson, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. Steve Doherty (D)
Sen. Delwyn Gage (R)
Sen. Wm. E. "Bill" Glaser (R)
Sen. John R. Hertel (R)
Sen. Loren Jenkins (R)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 49; Posted 3/7/97
Executive Action: HB 49, HB 560, HB 491

HEARING ON HB 49

Sponsor: REP. ALVIN ELLIS, JR., HD 23, Red Lodge

Proponents: Lance Melton, Montana School Boards Association
Don Waldron, Montana Rural Education Association
Loran Frazier, School Administrators of Montana
Eric Feaver, Montana Education Association
Terry Minow, Montana Federation of Teachers
Erik Hanson, Governor's Office

Opponents: None

Opening Statement by Sponsor:

REP. ALVIN ELLIS, JR., HD 23, Red Lodge, said HB 49 amended seven sections of school labor law and was endorsed by all parties of school labor agreements, i.e. a consensus bill.

Proponents' Testimony:

Lance Melton, Montana School Boards Association (MSBA), said the first side of (EXHIBIT 1) indicated the compromise among the different parties, while the back side contained the summary of HB 49 as it now stood. He referred to the technical amendment HB004901.ACE (EXHIBIT 2) and said it corrected an oversight. He stated HB 49 brought closure to labor and management issues over teacher tenure which had been in dispute for many years. It finalized the step toward binding arbitration in districts which had collective bargaining as a means of resolving termination disputes and also removed language which was inserted into law in 1991 regarding a statement of true reasons to a nontenure teacher released at the end of the contract year. Mr. Melton said there was a distinction between the termination standards during the contract year as opposed to the end of the contract year for the teacher who had yet to receive tenure, explaining during the contract year every teacher was protected by "good cause." He referred to Page 2, Paragraph 3, and said there was not a specific definition in the bill; all had agreed to remove the definition from the bill because the courts and arbitration panels had developed the term over the years (cause, good cause, just cause) -- all meant essentially "a good, decent reason to terminate employment." He asked for the Committee's support of HB 49.

Don Waldron, Montana Rural Education Association (MREA), said he had nothing to add other than it was a long haul getting to this point. He expressed appreciation for the legislators who had helped to bring the bill and urged the Committee's support.

Loran Frazier, School Administrators of Montana (SAM), expressed commendation for the sponsor of HB 49 as well as the associations which worked hard on the bill. He said HB 49 gave more clarification and was a trend toward the future; students won when less time was spent on the legal battles. He commented the concerns probably arose out of the changes, explaining change was often uncomfortable. He asked support for HB 49.

Eric Feaver, Montana Education Association (MEA), said teacher tenure had been in Montana since 1912 and teachers were wedded to the tenure concept even though most could not describe what it meant; therefore, when the legislature dealt with the concept, it drew a great deal of attention. He suggested it might have been the right idea to talk about nontenure teachers in 1991 in a way which would lead to their better understanding of what their performance failures might be, and admitted MEA pushed hard to pass the bill which allowed for nontenure teachers to appeal the

reasons given for their termination. He said though it was not MEA's intent, confusion arose over the difference between a tenure teacher with substantial property rights and a nontenure teacher who seemed to have a process similar to a tenure teacher. **Mr. Feaver** said MEA would argue current law hadn't served nontenure teachers well because it offered nontenure teachers a promise of what they didn't have, i.e. tenure.

Mr. Feaver started an historical review, stating with today's public education moving more toward accountability, the MEA and MFT was moving toward reconnection with their professional roots:

This association began in 1882 as a professional association, which made it older than the State of Montana or the Stockgrowers of Montana. They began as an interest in the professional nature of teaching and administration and stayed true to that until collective bargaining came to public education in 1973 or 1974. At that time they separated from the administrators and took on the trappings of a labor union, bargaining hard contracts. They still bargained hard contracts, bringing all the vim and vigor they had to the bargaining table; however, they had never abandoned their professional roots, though in the bargaining, etc., they drew away from the idea a nontenure teacher was a probationary teacher, i.e. a teacher who probably could not step immediately into the classroom without some difficulties.

He said in today's market, nontenure teachers needed more than understanding and accommodating building administrators; in fact, they needed the mentorship, peer review, guidance and assistance by professional, mastered tenure teachers. **Mr. Feaver** suggested there might be future problems for them if appellate reasons were in statute; in fact, he felt they were on the cusp of changing attitudes about tenure and nontenure. He stated he hoped the 1999 legislature would see a bill which would allow them to use different terms so they had meaning in both the public's and their members' eyes: "Tenure was nothing more than continuing employment and nontenure was probationary." **Mr. Feaver** suggested they could then meet with MSBA and SAM to deal with the issues which were the most important to the students they served, i.e. classroom excellence, or instruction, which met the demands of the students, communities and legislature. He urged the Committee TO CONCUR in HB 49 which would allow them to get on with public education in Montana.

Terry Minow, Montana Federation of Teachers (MFT), said she was glad to be one of the consensus groups who felt HB 49 represented meaningful tenure reform. She asked for the Committee's support.

Erik Hanson, Governor's Office, said the Governor fully supported HB 49 as amended. He expressed thanks to the sponsors and asked for the Committee's support.

Opponents' Testimony: None.

{Tape: 1; Side: A; Approx. Time Count: 3:28 p.m.}

Questions From Committee Members and Responses:

SEN. DEBBIE SHEA referred to a situation in her community in which a football coach was in the process of being hired; however, there was no teaching opening for him so she was afraid a nontenure teacher would be terminated in order to accommodate him. She wondered how that nontenure teacher would have protection under HB 49. Lance Melton said their position on tenure vs. nontenure was those terms said it all because the district's elected officials needed the flexibility to properly manage the district and to be able to identify which teachers would work out with the philosophy of the district in the long haul. He suggested tenure was equal protection from termination without cause, while nontenure was the opposite of that term; nontenure and the time needed to reach tenure allowed districts to properly manage themselves. He stressed he couldn't promise a good, nontenure teacher would never be let go, but the district needed the ability to figure out what would happen with a particular teacher, how it would work with that teacher, whether the district wanted him or her there over the long haul or whether he or she fit into the framework of the district.

SEN. SHEA suggested even if everything were aboveboard and the nontenure teacher was a quality teacher, HB 49 gave a loophole for the termination. Mr. Melton disagreed there was any loophole and said creating the statement of true reasons in 1991 (prior to that it was virtually identical to HB 49 which gives the ability to release a nontenure teacher at the conclusion of the contract year without cause). He said in 1991, Gov. Stan Stephens did an amendatory veto which created the statement of true reasons; in that bill he said he didn't want courts looking at both the truth and merit of the reason for letting the person go. Mr. Melton said SEN. SHEA was looking at both the truth and the merit of the nontenure teacher, an issue which was at the heart of the problem. He suggested it had to be assumed locally elected officials would be accountable to the voters of the district and run it with the best of intentions; the way to correct it would be the elective process.

SEN. SHEA said she had a concern for teachers who worked for years to get into the system but were not given at least the courtesy of a reasonable cause when terminated. She said she couldn't understand why trustees wouldn't want to have that in place as well. Lance Melton said the language was in line with the probationary status of other professions, admitting a quirk was nontenure teachers needed a longer period of time to reach tenure status; however, they also had job protection during the contract year, something other probationary employees didn't have.

SEN. CASEY EMERSON asked if anyone had gone past "final and binding arbitration" and carried it to District Court. **Eric Feaver** said the only way either an employer or employee could go beyond the arbitration was if there were clear violations of law in the arbiter's opinion, i.e. if the arbiter exceeded his or her authority. He said he was not aware of an arbitration which had been appealed; however, without HB 49 school districts could contest the arbitrable nature of the grievance at hand which could lead to litigation. He said they believed HB 49 would prevent that -- cases would be dealt with through arbitration.

SEN. EMERSON commented HB 49 would take a step or two out of the process, which would get the job done more quickly. **Mr. Feaver** said that was exactly what arbitration did; MEA had always felt arbitration was the way to settle disputes because it was done quickly, cheaply and without litigation.

SEN. DELWYN GAGE asked how the organizations polled their memberships for support of HB 49.

Eric Feaver said MEA had a process for developing legislative programs, involving a delegate assembly of about 315 MEA members elected statewide. He said their legislative program had a very clear statement which said MEA should support the elimination of tenure provided "due process and just cause" could be provided after a necessary and appropriate probationary period. **Mr. Feaver** said he would not be standing before the Committee if he didn't believe the MEA supported that position; in fact, it had been on the page of arbitration for quite some time. He admitted the repeal of "veracity of reasons given for a nontenure teacher" was a sensitive issue within MEA; however, he believed the legislative program was correct and MEA was complying and doing what its members elected them to do.

Lance Melton said portions of HB 49 passed unanimously at its Delegate and General Assembly which involved over 700 out of 1,500 trustees. He said information was FAXed to their members, sent in their bulletin and members advised as the proposal developed. **Mr. Melton** said the process involved inviting their comments as to whether MSBA was going in the right or wrong direction, etc; the response was overwhelming they were going in the right direction, especially in the area of working with others in the education community on this bill.

Don Waldron said MREA was the last to come aboard when the compromise was struck because they dealt with a board of directors who worked with various aspects of the bill and sent them in. He said they didn't get everything they wanted; however, he gave those items to the sponsor in case he could use them later. He said when everything was final, they decided enough of their "wants" had been included so decided to back off on the other items. He said he sent a letter to their members which explained the bill, asked for their input and the sending

of their responses to the Board. **Mr. Waldron** said there were no responses.

{Tape: 1; Side: A; Approx. Time Count: 3:41 p.m.}

Loran Frazier said SAM represented five affiliates, some members of which had problems with the language in the first drafting of the bill. He said the Legislative Committee Chairman sent information to all members of the superintendents and principals; all came back with a consensus with the bill in this draft. He suggested SAM had 90+% consensus.

Terry Minow said MFT set its positions through a convention which about 10 years ago took a position tenure could be abolished, in favor of "due process, just cause, binding arbitration." She said MFT had an executive council meeting in February at which HB 49 was the topic of discussion. **Ms. Minow** said the support was very strong, though not unanimous. She also mentioned MFT went together with MEA to inform its members of legislation status on a bi-weekly time schedule. She felt confident that for the most part, MFT members were pleased with HB 49.

SEN. LOREN JENKINS said he had talked to a teacher who favored abolishing tenure but felt more classroom evaluations should be done, and wondered if according to HB 49, evaluation would be "just cause." **Eric Feaver** said he hoped so; it should be based on actual supervision and evaluation of that performance because "good cause" should mean if a teacher was terminated, it would be done for a good documented reason which the employer could defend.

SEN. JENKINS asked **Terry Minow** the same question and was told a process had to be in place and HB 49 stated that process in cases of unfair termination; however, if a teacher, even after proper supervision and chance to improve, wasn't doing a good job it was only fair they move on.

SEN. STEVE DOHERTY asked if the tenure and nontenure reasons also applied to principals and superintendents. **Lance Melton** said superintendents were not included because they were hired during a contractual period and at the will of the board; however, principals were included with teachers.

SEN. DOHERTY asked if a principal could be fired before reaching tenure without true reasons. **Mr. Melton** said he or she could be.

SEN. DOHERTY asked what the standard of review would be when appeals were made to the county superintendent or District Court. **Lance Melton** said going before the county superintendent was only for the districts who did not have collective bargaining agreements; however, with respect to the appeals, HB 49 didn't change the review process or who paid the expenses. They didn't deal with binding arbitration in districts which had not previously experienced collective bargaining; in fact, that was

SENATE EDUCATION & CULTURAL RESOURCES COMMITTEE

March 19, 1997

Page 7 of 10

an important part of this proposal. He said everyone agreed the appeal process under current law was fairly lengthy so the intermediate appellate level (Office of Public Instruction) was removed.

SEN. DOHERTY asked how many districts didn't have collective bargaining agreements. **Mr. Melton** said about 80% of the teachers were in districts with collective bargaining and had experience in dealing with binding arbitration from the 1991 law; about 140 districts had no collective bargaining.

SEN. DELWYN GAGE referred to Page 4, Subsection (3), Line 2, and asked if the language was new. **REP. ELLIS** said previously "good cause" was defined and now it was not; however, it was a phrase recognized by all arbitrators and would be by any attorney advising a county superintendent of schools.

{Tape: 1; Side: A; Approx. Time Count: 3:54 p.m.}

Closing by Sponsor:

REP. ALVIN ELLIS, JR., said eliminating OPI was not a political point; rather, it shortened the process to make it more efficient so it worked better for the students. He said some proponents made some concessions; however, students won in all sections. He maintained teachers were more comfortable with binding arbitration and gave three examples of termination of nontenure teachers from his district -- two cases went before the county superintendent at a cost of about \$10,000, while the third was settled by binding arbitration at a cost of about \$4,500 and 100 hours of the superintendent's time to prepare for the hearing. He suggested in both instances "dirty linen" was aired for all to see, which was harmful to the school and its students. **REP. ELLIS** urged the Committee's endorsement.

{Tape: 1; Side: B; Approx. Time Count: 3:59 p.m.}

EXECUTIVE ACTION ON HB 49

Motion/Vote: **SEN. MIGNON WATERMAN** MOVED DO PASS ON AMENDMENTS HB004901.ACE (EXHIBIT 2). Motion CARRIED UNANIMOUSLY 11-0.

Discussion: **SEN. DELWYN GAGE** asked if passage of HB 49 would cause either trustees or teacher representatives to drag their heels in negotiations before July 1, 1997. He said he understood if the contract was entered into before July 1, 1997, it wouldn't be effective for that contract period. **Lance Melton** referred to the saving clause on Page 12 and said he couldn't think of any agreements which specified the process for appeal, other than collective bargaining agreements which said binding arbitration; that would not be contradictory to HB 49. He said he thought standards of termination in HB 49 would continue to be viable under a contract. **Eric Feaver** said HB 49 eliminated using the county superintendent, OPI or District Court; therefore, he

didn't believe there were any grounds for concluding the bargaining units would try to delay contract resolution until July 1, 1997.

Motion: SEN. MIGNON WATERMAN MOVED HB 49 AS AMENDED BE CONCURRED IN.

Discussion: SEN. BILL GLASER commented he had been sitting in Education Committee meetings since 1985 and he was amazed at the maturity, professionalism and statesmanship of the industry.

SEN. DELWYN GAGE commented the legislature could take a lesson from that.

SEN. BARRY "SPOOK" STANG suggested there were opponents to HB 49 who weren't there because he had gotten calls regarding the bill; therefore, he wouldn't categorize HB 49 as the deal because he felt the deal was made up here among the powers-to-be -- the "little people" probably didn't know it was made.

SEN. GLASER said he was the only vote his people had; therefore, he planned to be a statesman. He again expressed commendation to those who crafted HB 49.

Vote: Motion HB 49 AS AMENDED BE CONCURRED IN CARRIED 10-1 WITH SEN. DEBBIE SHEA VOTING NO. SEN. DARYL TOEWS will carry HB 49.

EXECUTIVE ACTION ON HB 560

Motion/Vote: SEN. BARRY "SPOOK" STANG MOVED HB 560 BE CONCURRED IN. Motion CARRIED 10-1 WITH SEN. LOREN JENKINS VOTING NO. SEN. BARRY "SPOOK" STANG will carry HB 560.

EXECUTIVE ACTION ON HB 491

Motion: SEN. BARRY "SPOOK" STANG MOVED HB 491 BE CONCURRED IN.

Discussion: SEN. STANG commented he had been involved in this dispute for years because it was in the middle of his district. He referred to the testimony and said it was absolutely true -- the present system allowed no resolution; however, HB 491 would allow resolution.

SEN. DARYL TOEWS said he agreed it was a crummy system because no resolution could ever be reached.

SEN. DELWYN GAGE said he had talked to the people involved with HB 491 and asked them if they would like a "Passage and Approval" date to be added. Those people said they wanted to pursue this as soon as possible; therefore, they wanted the date.

Motion/Vote: SEN. DELWYN GAGE MOVED DO PASS ON AMENDMENTS HB049101.AEM (EXHIBIT 3). Motion CARRIED UNANIMOUSLY 11-0.

Summary of Consensus Bill

- HB 49 provides for mandatory binding arbitration of termination decisions as the exclusive remedy in districts whose teachers are covered by a collective bargaining agreement under Title 39.
- HB 49 provides for appeal before the county superintendent for termination decisions in districts whose teachers are **NOT** covered by a collective bargaining agreement. This provision provides for an additional savings in litigation expenses in these cases by providing for appeal of the county superintendent's decision directly to district court instead of to OPI.
- HB 49 provides for dismissal of a tenure teacher or any teacher under contract for good cause. The definition of good cause originally proposed under HB 49 is removed from HB 49 to allow traditional definitions of this term and similar terms such as "just cause" or "cause" under arbitration decisions to control. It is the intent of the parties that the terms "good cause" and "just cause" and "cause" are all interchangeable and would be determined by the arbitrator by referencing traditional notions of these terms. The interchangeable term "good cause" replaces the terms "immorality, unfitness, incompetence, or violation of the adopted policies of such trustees," that are currently applied under 20-4-207(1), MCA. The term "good cause" is also placed in 20-4-204, MCA, to reflect court cases that have inferred a "good cause" requirement for dismissal under this section. The standard for dismissal will now be the same for any teacher, under contract, as well as for a tenure teacher dismissed at the end of the contract year.
- While protected by dismissal for good cause only during the contract year, a nontenure teacher under HB 49 may be nonrenewed at the end of the contract period with or without cause upon proper notice. HB 49 does not require a statement of true reasons. It provides for nontenure status during the first three contract years, and tenure upon the offer and acceptance of the fourth contract. This will eliminate all appeals for nonrenewals of nontenure teachers in the absence of a provision in the collective bargaining agreement to the contrary.
- HB 49 continues to provide for the return of an administrator to the classroom during a reduction in force, and provides the administrator with the right to the first administrative opening thereafter.
- HB 49 extends the deadline for reelection notice to June 1. This will give districts the extra time needed following the first opportunity to place a levy before the voters to better predict the need for staff in the ensuing school year. By extending the deadline to June 1, districts will have a better idea of the district's financial picture, leading to fewer unnecessary termination letters.
- HB 49 incorporates the principles of HB 198, introduced by Representative Ellis, which has since been tabled due to its inclusion in HB 49.

MSBA, MREA, MEA, MFT, AND SAM ALL SUPPORT HOUSE BILL 49!

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TO: SENATOR TOEWS, CHAIRMAN
COMMITTEE MEMBERS
SENATE EDUCATION AND CULTURAL RESOURCES COMMITTEE

FROM: MONTANA SCHOOL BOARDS ASSOCIATION
MONTANA EDUCATION ASSOCIATION
MONTANA RURAL EDUCATION ASSOCIATION
MONTANA FEDERATION OF TEACHERS
SCHOOL ADMINISTRATORS OF MONTANA

RE: HOUSE BILL 49

JOINT TESTIMONY OF MSBA, MEA, MREA, MFT, & SAM

House Bill 49 comes to the Senate Education Committee after a consensus agreement reached by the representatives of all affected parties in the House. The Montana School Boards Association (MSBA), the Montana Education Association (MEA), the Montana Rural Education Association (MREA), the Montana Federation of Teachers (MFT) and the School Administrators of Montana (SAM) have joined in supporting the current version of House Bill 49 without any changes other than deletion of the word "tenure" on page 9, line 16, as introduced by the sponsor. The single amendment is necessary to correct a typographical error from the bill. House Bill 49 as currently written contains a very important compromise that will work to the benefit of public education and the children educated in this system.

Concessions by Those Representing the Interests of School Boards and Administrators:

The primary concession by those representing the school boards and administrators was the decision to agree to mandatory binding arbitration as the sole means of resolving disputes over termination decisions in districts where the teachers are covered by a collective bargaining agreement. This part of the agreement involves a significant departure from a historical, philosophical opposition to arbitration by school districts.

Concessions by Those Representing the Interests of Teachers:

The primary concession by those representing teachers was the removal of the "true reasons" language for nontenure teachers. This language has been subject to litigation, and was first placed in the law in 1991.

The remainder of House Bill 49 involves provisions that have not been controversial as this bill has progressed. The summary on the next page identifies the changes enacted by House Bill 49. The compromise reached on this bill has been difficult to achieve, and is based strictly on the version of House Bill 49 that you have before you. The parties to this agreement respectfully urge that the Senate Education Committee issue a "do concur" recommendation on House Bill 49 without changes other than the technical amendment on Page 9, line 16.

SENATE EDUCATION

EXHIBIT NO. 2

DATE 3/19/97

BILL NO. HB 49

Amendments to House Bill No. 49
Third Reading Copy

For the Senate Committee on Education

Prepared by Connie Erickson
March 11, 1997

1. Page 9, line 15.
Strike: "tenure"



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1997

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration House Bill 49 (third reading copy -- blue), respectfully report that House Bill 49 be amended as follows and as so amended be concurred in.

Signed: _____

Daryl Toews
Senator Daryl Toews, Chair

That such amendments read:

1. Page 9, line 15.

Strike: "tenure"

-END-

K
by Amd. Coord.
Sec. of Senate

Sen. Daryl Toews
Senator Carrying Bill

610825SC.STS

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DATE 3/19/97

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: HB 49

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Eric Deane</i>	MEA	HB 49	X	
<i>Jean Fagin</i>	SHAM	HB 49	✓	
LANCE MELTON	MSBA	HB 49	✓	
<i>Donald R. Waldron</i>	MSBA	HB 49	✓	
<i>Terry Miron</i>	MFT	HB 49	✓	
<i>Buddy Melec</i>	MFT	HB 49	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE BILL NO. 49

INTRODUCED BY ELLIS, COBB, SIMPKINS, LAWSON, WALTERS, ROSE, MASOLO, PECK, REHBEIN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS AND CONTESTED CASE PROCEDURES; ~~PROVIDING TENURE TO A TEACHER OR SPECIALIST WHO COMPLETES A 180 WORKING DAY PROBATIONARY PERIOD ON THE EARLIER OF EITHER THE DATE OF THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE SECOND CONSECUTIVE YEAR OR EMPLOYMENT ON JUNE 30 OF THE YEAR FOLLOWING THE INITIAL DATE OF HIRE; PROVIDING THAT IF THE TEACHER OR SPECIALIST HAS NOT SATISFACTORILY COMPLETED A 180 WORKING DAY PROBATIONARY PERIOD BEFORE THE END OF THE INITIAL EMPLOYMENT CONTRACT, TENURE IS PROVIDED UPON THE SATISFACTORY COMPLETION OF THE 180 WORKING DAY PROBATIONARY PERIOD~~ REMOVING JURISDICTION OF THE OFFICE OF PUBLIC INSTRUCTION TO HEAR APPEALS AND TO DECIDE DISPUTES ARISING FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA; CLARIFYING THAT A DISTRICT MAY TERMINATE EMPLOYMENT OF A TENURE TEACHER FOR GOOD CAUSE; DEFINING "GOOD CAUSE" AND "SAME SALARY"; PROVIDING THAT THE RIGHT TO THE SAME SALARY MAY BE WAIVED BY MUTUAL AGREEMENT; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF A TEACHER OR SPECIALIST; LIMITING APPEAL OF EMPLOYMENT TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA, TO FINAL AND BINDING ARBITRATION; ESTABLISHING A PROCEDURE FOR ARBITRATION NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR; REMOVING JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT A DISTRICT MAY TERMINATE THE EMPLOYMENT OF A NONTENURE TEACHER AT THE CONCLUSION OF A SCHOOL FISCAL YEAR WITH OR WITHOUT CAUSE UPON PROPER NOTICE; CLARIFYING THAT A DISTRICT MAY DISMISS FOR GOOD CAUSE A TENURE OR NONTENURE TEACHER BEFORE THE EXPIRATION OF A CONTRACT; CLARIFYING THAT A DISTRICT MAY REDUCE THE SALARY OF A TEACHER SERVING IN AN ADMINISTRATIVE POSITION WHO IS ASSIGNED TO A TEACHING POSITION WHEN A DISTRICT REDUCES THE SIZE OF ITS ADMINISTRATIVE STAFF; AMENDING SECTIONS 20-3-107, 20-3-210, 20-4-203, 20-4-204, 20-4-205, 20-4-206, 20-4-207, AND

20-4-208, ~~AND 20-7-456, MCA; REPEALING SECTIONS 20-4-206 AND 20-4-207, MCA; AND PROVIDING~~
AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY PROVISION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 20-3-107, MCA, IS AMENDED TO READ:

"20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210, except for a decision of a county superintendent or an arbitrator in a teacher termination case; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make ~~his~~ a decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if ~~he deems~~ considered necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction ~~shall be~~ is final, subject to the proper legal remedies in the state courts. ~~Such~~ The proceedings ~~shall~~ must be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, ~~he~~ the superintendent of public instruction shall appoint a ~~hearing~~ hearings examiner as provided in 2-4-611 and the decision of the ~~hearing~~ hearings examiner constitutes the superintendent's final order except as provided in this subsection. ~~Such~~ The final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7."

Section 2. Section 20-4-203, MCA, is amended to read:

"20-4-203. Teacher ~~and specialist~~ tenure ~~definitions~~ waiver. (1) ~~(a)~~ Except as provided in

20-4-208 ~~and subsection (1)(b) of this section, whenever~~ WHENEVER a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be ~~or specialist working in a position requiring teacher or specialist certification, except as a district superintendent, is considered to be tenured upon satisfactorily completing a 180-working day probationary period and upon the earlier of:~~

~~(i) the date of the offer and acceptance of a contract for the second consecutive year; or~~

~~(ii) employment on June 30 of the year following the initial date of hire.~~

~~(b) If the teacher or specialist has not satisfactorily completed a 180-working day probationary period before the end of the initial employment contract, the teacher or specialist is considered to be tenured upon the satisfactory completion of the probationary period.~~

~~(2) Employment for less than 30 consecutive working days may not be counted as part of the minimum 180-day requirement.~~

~~(3) Prior to receiving tenure, the employment relationship between a board of trustees and a teacher or specialist may be terminated at any time by either party with or without good cause. A teacher or specialist terminated during the probationary period may not pursue an action against the school district under the provisions of Title 39, chapter 2, part 9. A school district may not be compelled to arbitrate a grievance under 27-5-115 over a teacher or specialist termination during the probationary period.~~

~~(4) Upon receiving tenure, a teacher or specialist is considered to be~~ HAS BEEN ELECTED BY THE OFFER AND ACCEPTANCE OF A CONTRACT FOR THE FOURTH CONSECUTIVE YEAR OF EMPLOYMENT BY A DISTRICT IN A POSITION REQUIRING TEACHER CERTIFICATION EXCEPT AS A DISTRICT SUPERINTENDENT OR SPECIALIST, THE TEACHER IS CONSIDERED TO BE reelected from year to year thereafter as a tenure teacher ~~or specialist~~ at the same salary and in the same or a comparable position of employment as that provided by the ~~last-executed~~ last-executed contract with the teacher ~~or specialist~~ unless the trustees resolve by majority vote of their membership to terminate the services of the teacher ~~or specialist~~ in accordance with the provisions of 20-4-204.

~~(2)(5)(2)~~ (2) The tenure of a teacher ~~or specialist~~ with a district may not be impaired upon termination of services of the teacher ~~or specialist~~ if the following conditions exist:

(a) the tenure teacher ~~or specialist~~ is terminated because the financial condition of the district requires a reduction in the number of teachers ~~or specialists~~ employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

~~(6)(3) Upon receiving tenure, the employment of a teacher or specialist may be terminated for good cause.~~

~~(7) The right to the same salary may be waived by mutual agreement between the district and the teacher or specialist or, if the teacher or specialist is a member of a bargaining unit, by the teacher's or specialist's exclusive representative.~~

~~(8) As used in this section, the following definitions apply:~~

~~(a) "Good cause" means reasonable, job-related grounds for dismissal that are based on failure to satisfactorily perform job duties, disruption of a school district's operation, or any other legitimate business reason.~~

~~(b) "Same salary" means the salary paid to a teacher or specialist for services provided during the previous school year, excluding fringe benefits, extra duty, or an extended year contract."~~

Section 3. Section 20-4-204, MCA, is amended to read:

"20-4-204. Termination of tenure teacher or specialist services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher or specialist:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall, ~~before May 1 of the current school fiscal year,~~ notify the teacher or specialist of the recommendation for termination and of the teacher's or specialist's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's or specialist information.

(3) The teacher ~~or specialist~~ may, in writing, waive the right to a hearing. Unless the teacher ~~or specialist~~ waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher ~~or specialist~~, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher ~~or specialist~~ or to reject the recommendation for termination.

(5) The tenure teacher ~~or specialist~~ may appeal a decision to terminate an employment contract to the county superintendent who may appoint a qualified attorney at law as legal advisor who shall assist the superintendent in preparing findings of fact and conclusions of law THE COUNTY SUPERINTENDENT IF THE TEACHER'S EMPLOYMENT IS NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, WHO MAY APPOINT A QUALIFIED ATTORNEY AS A LEGAL ADVISER WHO SHALL ASSIST THE SUPERINTENDENT IN PREPARING FINDINGS OF FACT AND CONCLUSIONS OF LAW. IF THE EMPLOYMENT OF THE TEACHER IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A TENURE TEACHER SHALL APPEAL A DECISION TO TERMINATE AN EMPLOYMENT CONTRACT TO an arbitrator agreed upon by the district and the teacher or specialist or, if the teacher or specialist is represented by a labor organization, by the teacher's or specialist's exclusive representative. If a teacher or specialist is not a member of a bargaining unit or if the exclusive representative has declined to represent the teacher or specialist, the teacher or specialist or the district may request that the board of personnel appeals provide a list of arbitrators from which the teacher or specialist and the district shall, after the toss of a coin to determine the order of striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

(6) IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, EITHER THE TEACHER OR THE TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NO LATER THAN 60 DAYS AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT.

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~~(6)~~ Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.

~~(6)~~(7) A IN A TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, A request for arbitration must be made within 20 days from the date of termination unless an alternative time period is provided by the terms of a collective bargaining agreement.

~~(7)~~(8) The decision of the arbitrator is final and binding. Each party shall pay one-half of an arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

~~(8)~~(9) An arbitrator may order a school district to reinstate a teacher ~~or specialist~~ who has been terminated without good cause and to provide compensation, with interest, to a teacher ~~or specialist~~ for lost wages and fringe benefits from the date of termination to the date that the teacher ~~or specialist~~ is offered reinstatement to the same or a comparable position. Interim earnings, including the amount that the teacher ~~or specialist~~ could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent by a teacher ~~or specialist~~ in searching for, obtaining, or relocating to new employment must be deducted from interim earnings.

~~(9)~~(10) Except as provided in this section, an arbitrator may not order a school district to provide compensation for punitive damages, pain and suffering, emotional distress, compensatory damages, attorney fees, or any other form of damages.

~~(10)~~(11) Upon submission of the termination decision to an arbitrator, the teacher ~~or specialist~~ or the teacher's ~~or specialist's~~ exclusive representative may not file an action against the district for reinstatement or compensation of lost wages and fringe benefits.

~~(11)~~(12) As used in this section, the following definitions apply:

(a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

(b) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service on Form W-2 and includes any compensation deferred at the option of the employee."

Section 4. Section 20-4-205, MCA, is amended to read:

"20-4-205. Notification of ~~tenure~~ teacher ~~or specialist~~ reelection -- acceptance. (1) The trustees

1 shall provide written notice by ~~May 1~~ June 1 to all ~~tenure teachers or specialists~~ who have been reelected.
2 Any ~~tenure teacher or specialist~~ who does not receive notice of reelection or termination ~~shall be~~ is
3 automatically reelected for the ensuing school fiscal year.

4 (2) Any ~~tenure teacher or specialist~~ who receives notification of ~~his~~ reelection for the ensuing
5 school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of ~~such~~ the
6 reelection within 20 days after the receipt of the notice of reelection, and failure to ~~so~~ notify the trustees
7 within 20 days ~~shall constitute~~ constitutes conclusive evidence of ~~his~~ the teacher's or specialist's
8 nonacceptance of the tendered position."

9
10 **SECTION 5. SECTION 20-4-206, MCA, IS AMENDED TO READ:**

11 **"20-4-206. Notification of nontenure teacher reelection -- acceptance -- termination and statement**
12 **of reason.** (1) The trustees shall provide written notice by ~~May~~ June 1 to all ~~nontenure teachers who have~~
13 ~~each nontenure teacher employed by the district regarding whether the nontenure teacher has~~ been
14 reelected for the ensuing school fiscal year. A ~~nontenure~~ teacher who does not receive written notice of
15 reelection or termination is automatically reelected for the ensuing school fiscal year.

16 (2) A ~~nontenure~~ nontenure teacher who receives notification of ~~his~~ reelection for the ensuing school
17 fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of reelection within 20
18 days after the receipt of the notice of reelection. Failure to ~~so~~ notify the trustees within 20 days ~~may be~~
19 ~~considered~~ constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered
20 position.

21 (3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the
22 employment of a nontenure teacher at the conclusion of the school fiscal year with or without
23 cause. ~~When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after~~
24 ~~receipt of the notice make written request of the trustees for a statement in writing of the reasons for~~
25 ~~termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the~~
26 ~~teacher a true statement of reasons for termination.~~

27 (4) ~~If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher~~
28 ~~may request in writing within 10 days of receipt of the statement of reasons that the county superintendent~~
29 ~~hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be~~
30 ~~scheduled within 10 days and held within 45 days after receipt of the request, except that the period may~~

~~be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.~~

~~(5) If, after a hearing, the county superintendent determines that the reasons are not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.~~

~~(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed."~~

SECTION 6. SECTION 20-4-207, MCA, IS AMENDED TO READ:

"20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of ~~his~~ the teacher's employment contract for ~~immorality, unfitness, incompetence, or violation of the adopted policies of such trustees~~ good cause.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

- (i) a district superintendent;
- (ii) in a district without a district superintendent, a principal; or
- (iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of ~~his~~ the right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of

1 the hearing to dismiss the teacher or to reject the recommendation for dismissal.

2 (4) With the exception of a county superintendent, a person who recommends dismissal pursuant
3 to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing
4 date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the
5 welfare of the students or the effective operation of the school district.

6 (5) Any teacher who has been dismissed may in writing within 10 days appeal ~~such~~ the dismissal
7 ~~to the county superintendent. Following such appeal, a hearing must be scheduled within 10 days and held~~
8 ~~within 30 days after the appeal, except that the period may be extended upon agreement between the~~
9 ~~teacher and the trustees. If the county superintendent, after a hearing, determines that the dismissal by the~~
10 ~~trustees was made without good cause, he shall order the trustees to reinstate such teacher and to~~
11 ~~compensate such teacher at his contract amount for the time lost during the pending of the appeal under~~
12 the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment
13 contract to the county superintendent if the teacher's employment is not covered by a collective bargaining
14 agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective
15 bargaining agreement, a tenure teacher shall appeal a decision to terminate an employment contract to an
16 arbitrator."

17
18 **Section 7.** Section 20-4-208, MCA, is amended to read:

19 **"20-4-208. Transfer from administrative position.** (1) A tenure teacher ~~or specialist~~ serving in an
20 administrative position may be assigned to a teaching ~~or specialist~~ position with a reduction in salary when
21 the ~~economic conditions of the district require a reduction~~ reduces the size of its administrative staff. The
22 salary for the new position must be the same as the salary that the teacher ~~or specialist~~ would have
23 received if the teacher ~~or specialist~~ had been continuously employed in the new position rather than in the
24 administrative position.

25 (2) If a board policy or a collective bargaining agreement provides seniority rights for teachers ~~or~~
26 ~~specialists~~, a district that assigns a tenure teacher ~~or specialist~~ serving in an administrative position to a
27 teaching ~~or specialist~~ position shall recognize for ~~teacher~~ seniority purposes the tenure teacher's ~~or~~
28 ~~specialist's~~ time of service in the administrative position.

29 (3) As used in this section, the term:

30 ~~(a)~~ "administrative position" means a position that the trustees of a district designate as

25

1 administrative or supervisory in nature, not including the position of district superintendent; and

2 ~~(b) "reduction of administrative staff" is limited to reductions necessary because of declining~~
3 ~~enrollment or financial exigency.~~

4 ~~(4) When a tenure teacher serving in an administrative position is to be transferred under this~~
5 ~~section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which~~
6 ~~a signed receipt must be obtained. The notification must include:~~

7 ~~(a) a statement of the reason or reasons for the reduction of administrative staff; and~~

8 ~~(b) a printed copy of this section for the teacher's information.~~

9 ~~(5) A tenure teacher who receives notice under subsection (4) may request in writing, within 10~~
10 ~~days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not~~
11 ~~less than 10 days or more than 20 days from receipt of the request unless both parties agree to an~~
12 ~~extension. If a hearing is requested, the trustees shall:~~

13 ~~(a) conduct the hearing to determine whether the reason or reasons for the transfer were in~~
14 ~~compliance with the provisions of subsection (1); and~~

15 ~~(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the~~
16 ~~teacher to the administrative position.~~

17 ~~(6) A tenure teacher may appeal a decision under this section to the county superintendent as~~
18 ~~provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason~~
19 ~~or reasons for the transfer were in compliance with the provisions of subsection (1).~~

20 ~~(7) The teacher or the trustees may appeal the determination of the county superintendent to the~~
21 ~~superintendent of public instruction as provided in 20-3-107.~~

22 ~~(8)(4) A tenure teacher who is transferred to a teaching position under this section must be offered~~
23 ~~the next comparable administrative position for which he is endorsed that becomes available in the district~~
24 ~~or specialist may appeal a decision pursuant to the arbitration procedure established in 20-4-204 WHO IS~~
25 ~~TRANSFERRED TO A TEACHING POSITION UNDER THIS SECTION MUST BE OFFERED THE NEXT~~
26 ~~COMPARABLE ADMINISTRATIVE POSITION FOR WHICH THE TENURE TEACHER IS ENDORSED THAT~~
27 ~~BECOMES AVAILABLE IN THE DISTRICT."~~

28
29 **Section 8.** Section 20-3-210, MCA, is amended to read:

30 **"20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of

1 a collective bargaining agreement or as provided under 20-3-211, ~~20-4-204~~, or 20-4-208, the county
2 superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions
3 of the trustees of a district in the county. ONLY A COUNTY SUPERINTENDENT WHO POSSESSES THE
4 QUALIFICATIONS OF 20-3-201(2) MAY HEAR CONTROVERSIES RELATED TO TEACHER TERMINATION.
5 Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required
6 prior to filing an action in district court concerning a decision of the trustees. ~~When appeals are made under~~
7 ~~20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the~~
8 ~~dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law~~
9 ~~to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions~~
10 ~~of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction~~
11 ~~under the provisions for appeal of controversies in this title. WHEN APPEALS ARE MADE UNDER 20-4-204~~
12 ~~RELATING TO THE TERMINATION OF SERVICES OF A TENURE TEACHER OR UNDER 20-4-207 RELATING~~
13 ~~TO THE DISMISSAL OF A TEACHER UNDER CONTRACT, THE COUNTY SUPERINTENDENT MAY APPOINT~~
14 ~~A QUALIFIED ATTORNEY TO ACT AS A LEGAL ADVISER WHO SHALL ASSIST THE SUPERINTENDENT~~
15 ~~IN PREPARING FINDINGS OF FACT AND CONCLUSIONS OF LAW. SUBSEQUENTLY, EITHER THE~~
16 ~~TEACHER OR TRUSTEES MAY APPEAL TO THE DISTRICT COURT OF THE COUNTY IN WHICH THE~~
17 ~~TEACHER WAS EMPLOYED. THE PROCEEDINGS MUST BE COMMENCED NOT LATER THAN 60 DAYS~~
18 AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. The county superintendent shall
19 hear and decide all controversies arising under:

- 20 (a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or
21 ~~(b) 20-4-206(4); or~~
22 ~~(c)(b)~~ (b) any other provision of this title for which a procedure for resolving controversies is not
23 expressly prescribed.
- 24 (2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court
25 concerning a decision of the trustees of a district in the following instances:
- 26 (a) a state agency has been granted primary jurisdiction over the matter;
27 (b) the matter is governed by a specific statute; or
28 (c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.
- 29 (3) The county superintendent shall hear the appeal and take testimony in order to determine the
30 facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The

1 county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the
2 matter of controversy that is made by the county superintendent must be based upon the facts established
3 at the hearing.

4 (4) ~~The EXCEPT FOR TEACHER TERMINATION CASES, THE~~ decision of the county superintendent
5 may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent
6 shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the
7 superintendent of public instruction. IN TEACHER TERMINATION CASES, AN APPEAL MAY BE FILED WITH
8 THE DISTRICT COURT OF THE COUNTY IN WHICH THE TEACHER WAS EMPLOYED NO LATER THAN 60
9 DAYS AFTER THE DATE OF THE DECISION OF THE COUNTY SUPERINTENDENT. IF AN APPEAL IS FILED,
10 THE COUNTY SUPERINTENDENT SHALL PROVIDE A TRANSCRIPT OF THE HEARING AND ANY OTHER
11 DOCUMENTS ENTERED AS TESTIMONY AT THE HEARING TO THE DISTRICT COURT.

12 (5) Cost incurred by the office of the county superintendent must be paid from the general fund
13 budget of the county in which the controversy is initiated."
14

15 ~~Section 6. Section 20-7-456, MCA, is amended to read:~~

16 ~~"20-7-456. Tenure of teachers or specialists employed by cooperatives. (1) Teachers or specialists~~
17 ~~who have tenure rights with a district and who are employed by a cooperative of which their district is a~~
18 ~~member do not lose their tenure with the district.~~

19 ~~(2) Nontenured teachers or specialists employed by a cooperative acquire tenure with a cooperative~~
20 ~~in the same manner as proscribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 and~~
21 ~~20-4-205 are applicable to teachers or specialists employed by a cooperative.~~

22 ~~(3) Tenure for a teacher or specialist employed by a cooperative is acquired only with the~~
23 ~~cooperative and not with a member school district of a cooperative.~~

24 ~~(4) For the purposes of tenure of a teacher or specialist employed by a cooperative, cooperative~~
25 ~~contract renewals may not be used to limit the teacher's or specialist's progress toward tenure status."~~
26

27 ~~NEW SECTION. Section 7. Repealer. Sections 20-4-206 and 20-4-207, MCA, are repealed.~~

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29 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that
30 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this

1 act].

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3 NEW SECTION. Section 10. Effective date ~~—applicability.~~ [This act] is effective July 1, 1997,
4 and ~~applies retroactively, within the meaning of 1-2-109, to contracts offered for the 1997-98 school year.~~

5

-END-